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## **DECLARATION OF CONDOMINIUM FOR CABANA KEY, A CONDOMINIUM**

**RPG Cabana Key LLC, a Delaware** limited liability company ("Developer"), does hereby declare as follows:

### **1. INTRODUCTION AND SUBMISSION.**

- 1.1     The Land. The Developer owns fee simple title to certain land located in Seminole County, Florida, as more particularly described in Exhibit "A" attached hereto (the "Land").
- 1.2     Submission Statement. The Developer hereby submits the following to the condominium form of ownership in the manner provided herein and in the Florida Condominium Act as it exists on the date hereof and as it may be hereafter renumbered:
- (a)     the Land and all Improvements erected or to be erected thereon,
  - (b)     all easements, rights and appurtenances thereto, and all other property, real, personal or mixed, intended for use in connection therewith, and
  - (c)     the Units and the Common Elements now or hereafter situated on the Property;
- excluding, however, all cable television, cellular phone antennae and other utility installations or equipment owned by a cable television, telecommunication, cellular phone or utility provider which have contracted with or have imposed other legal requirements upon the Developer or the Association to provide a utility or telecommunication service and/or equipment. The Units and Common Elements are hereby declared to be subject to the restrictions, easements, conditions and covenants contained in this Declaration governing the use of the Units and Common Elements and prescribing the obligations and responsibilities incident to ownership of each Unit and its appurtenant Limited Common Elements and undivided interest in Common Elements.
- 1.3     Name. This condominium is to be identified by the name **CABANA KEY, A CONDOMINIUM** (hereinafter called the "Condominium").

### **2. DEFINITIONS.** The following terms when used in this Declaration and in its exhibits, and as it and they may hereafter be amended, shall have the respective meanings ascribed to them in this Article, except where the context clearly indicates a different meaning:

- 2.1     "Act" means the Florida Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date this Declaration is recorded and as it may be hereafter renumbered.
- 2.2     "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Association, as amended from time to time. A copy of the Articles is attached to this Declaration as Exhibit "E" and made a part hereof.
- 2.3     "Assessment" means any of the types of assessments defined below:
- (a)     "General Common Assessment" is the share of the funds required for the payment of General Common Expenses assessed from time to time against a Unit Owner and the Unit Owner's Unit.



- (b) "Capital Improvement Assessment" is assessed against a Unit Owner and the Unit Owner's Unit, and represents a portion of the costs incurred by the Association for the acquisition, installation, construction or replacement (as distinguished from repairs and maintenance) of any capital improvements located or to be located within the Common Elements or Association Property.
  - (c) "Special Assessment" is assessed against a Unit Owner and the Unit Owner's Unit and represents a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature which are not in the nature of capital improvements.
- 2.4 "Association" means Cabana Key Condominium Association, Inc., a Florida not for profit corporation, the sole entity responsible for the operation of the Condominium.
- 2.5 "Association Property" means that property, real and personal, which is owned or leased by the Association for the use and benefit of the Owners.
- 2.6 "Board" or "Board of Directors" means the board of directors and the members of the board of directors, from time to time, of the Association.
- 2.7 "Building(s)" means the structure or structures on the Condominium Property in which the Units and the Common Elements are located, regardless of the number of such structures.
- 2.8 "By-Laws" means the By-Laws of the Association, as amended from time to time. A copy of the By-Laws is attached to this Declaration as Exhibit "D" and made a part hereof.
- 2.9 "Charge" means the obligation of a Unit Owner to pay or reimburse money to the Association that cannot be secured as an Assessment pursuant to Section 718.116 of the Act, but which will, if the charge is not paid, give rise to a cause of action against the Unit Owner pursuant to this Declaration.
- 2.10 "Common Elements" means and includes:
  - (a) The portions of the Condominium Property which are not included within the Units.
  - (b) Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units and the Common Elements.
  - (c) An easement of support in every portion of a Unit which contributes to the support of the Building.
  - (d) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements.
  - (e) Any other parts of the Condominium Property designated as Common Elements in this Declaration.
- 2.11 "Common Expenses" means any of the types of expenses defined below as the context so dictates incurred by the Association for the operation, maintenance, repair, replacement or protection of the Common Elements and the Association Property, the costs of carrying out the powers and duties of the Association and any other expense relating thereto for which the Unit Owners are liable pursuant to the Act, this Declaration, the Articles of Incorporation, or the By Laws. Common Expenses shall not include any separate obligations of individual Unit Owners.

"Common Expenses" means those Common Expenses incurred by the Association for the operation, maintenance, repair, replacement or protection of the Common Elements and the Association Property for which the Unit Owners are liable to the Association, and any other expense designated as a "Common Expense" by the Act, this Declaration, the Articles of Incorporation, or the By Laws. For purposes of this Declaration, "Common Expenses" shall also include, without limitation: (a) all reserves for Common Elements required by the Act or otherwise established by the Association, regardless of when reserve funds are expended; (b) the cost of a master antenna television system or duly franchised cable television service obtained pursuant to a bulk contract; (c) if applicable, costs relating to insurance for directors and officers, in-house and/or interactive communications and surveillance systems; (d) the real property taxes and other maintenance expenses attributable to any Association Property; (e) any

unpaid share of Common Expenses or Common Assessments extinguished by foreclosure of a superior lien or by deed in lieu of foreclosure; (f) the costs of carrying out the powers and duties of the Association relating to the Common Elements; (g) insurance premiums as described in Article 14; (h) legal and accounting fees, management fees and compensation and operating expenses of the Common Elements; and (i) any other expenses designated from time to time by the Board of Directors as Common Expenses which are not inconsistent with the Act. A Unit Owner's share of the Common Expenses is stated as a percentage as set forth on Exhibit "C", which is based on the total square footage of each Unit in uniform relationship to the total square footage of all of the Units in the Condominium. The square footage of the Residential Units excludes the square footage of the balconies and terraces, but includes exterior walls and demising walls.

- 2.12 "Common Surplus" means any of the types of common surplus defined below as the context dictates.
- (a) "Common Surplus" means the excess of all receipts of the Association collected on behalf of the Association from the Unit Owners over and above the amount of General Common Expenses.
- 2.13 "Condominium Documents" means this Declaration, the Articles of Incorporation, By-Laws of the Association, the Rules and Regulations, and other applicable provisions of any agreement, document or instrument governing the Condominium or administered by the Association
- 2.14 "Condominium Parcel" means a Unit together with the undivided share in the Common Elements which is appurtenant to said Unit; and when the context permits, the term includes all other appurtenances to the Unit.
- 2.15 "Condominium Property" means the Land, all Improvements on the Land, and personal property that are subjected to condominium ownership under this Declaration, and all easements and rights appurtenant thereto intended for use in connection with the Condominium.
- 2.16 "County" means Seminole County, Florida.
- 2.17 "Declaration" means this instrument, and all exhibits attached hereto, as same may be amended from time to time.
- 2.18 "Developer" means RPG Cabana Key, LLC, its successors and such of its assigns as to which the rights of Developer hereunder are specifically assigned. Developer may assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with specific portions of the Condominium. In the event of any partial assignment, the assignee shall not be deemed the Developer, but may exercise such rights of Developer as are specifically assigned to it. Any such assignment may be made on a nonexclusive basis.
- 2.19 "Parking Area" means those parking spaces, ramps, driveways and walkways located on the Condominium Property and intended for use as motor vehicle parking.
- 2.20 "Common Elements" means, without limitation, (i) all foundations, columns, girders, beams, interior load-bearing walls or exterior walls and any other structural elements of a Building and the roofing system of a Building, whether or not located within the boundaries of a Unit; (ii) those portions of the exterior walls of a Building that are outside of the undecorated inner surface of such walls; (iii) all installations designed for common use; (iv) fire command room, transformer vault, trash room, ground floor electric room, fire and domestic pump room and equipment and facilities related thereto, and mechanical room, radio repeat room, storage rooms on the roof level; (v) administration office, manager office, and storage on the ground floor; (vi) the awnings located on the exterior of a Building, if any; (vii) all driveways, sidewalks and access ways leading to a Building and located on the Condominium Property; (viii) Parking Area; and (ix) all landscaping, lawn and grass areas and sprinkler systems within the Condominium Property.
- 2.21 "Guest" means any person who is physically present in or occupies a Unit on a temporary basis at the invitation of the Unit Owner without the payment of consideration.
- 2.22 "Improvements" means all structures, or any portion thereof, and artificial changes to the natural envi-

ronment (exclusive of landscaping), located on the Condominium Property, including but not limited to the Buildings.

- 2.23 "Institutional First Mortgagee" means any Unit Owner, federal or state commercial bank, federal or state savings bank, federal or state savings and loan association, federal or state trust company, life insurance company, casualty insurance company, agency of the United States government, mortgage banker, pension plan, REMIC trust, credit union, broker dealer, investment banking firm, commercial brokerage firm, real estate investment trust, or other financial institution or similar entity making loans in the United States and recognized as an institutional lender, the Developer, and or any affiliate, subsidiary, successor or assignee of the foregoing, holding or serving as a trustee or servicer of a first mortgage on a Unit, or a collateral assignment of a first mortgage on a Unit.
- 2.24 "Lease" means the grant by a Unit Owner of a temporary right of use of a Unit.
- 2.25 "Limited Common Elements" means those Common Elements, the use of which is reserved to a certain Unit or Units to the exclusion of the other Units, as same are shown on Exhibit "B" or are specified in this Declaration. Reference in this Declaration to Limited Common Elements shall include Common Elements, Limited Common Elements, as the context so dictates. Except as set forth in Exhibit "B", in the event of any reasonable doubt or dispute as to whether any portion of the Common Elements constitutes a Limited Common Element, or whether any portion of the Limited Common Elements constitute Common Elements, or in the event of any question as to which Units are served thereby, a decision shall be made by a majority vote of the Board of Directors of the Association and shall be binding and conclusive when so made; provided, however, this provision shall not affect Common Elements identified as such in Exhibit "B" to this Declaration.
- 2.26 "Member" means each Unit Owner who is a member of the Association. Notwithstanding the foregoing, each Residential Unit shall have one (1) indivisible vote that may be cast at meetings of the Members pursuant to the terms of the By-Laws.
- 2.27 "Occupant" means a person (be it a Unit Owner or a Tenant) who resides in a Residential Unit. Where the context dictates, an Occupant shall also be deemed to include the family members, Guests, licensees and invitees.
- 2.28 "Primary Institutional First Mortgagee" means the Institutional First Mortgagee which owns, at the relevant time, Unit mortgages securing the greatest aggregate original principal indebtedness.
- 2.29 "Residential Unit" means a Unit dedicated solely for residential purposes.
- 2.30 "Rules and Regulations" means the Rules and Regulations of the Association, as amended from time to time. A copy of the Rules and Regulations is attached to this Declaration as Exhibit "F".
- 2.31 "Tenant" means the person or persons, entity or entities, who are the tenants or lessees under a Lease of any part or all of a Unit. Tenants shall not be Members of the Association, but shall, through the Unit Owner, be entitled to certain rights and undertake certain obligations with respect to the Unit. Such rights and obligations are appurtenant to the Tenant's Lease of a Unit.
- 2.32 "Unit" means a part of the Condominium Property which is subject to exclusive fee simple ownership. The term "Unit," where the context so requires or admits, is often used synonymously in this Declaration with "Condominium Parcel" when meaning the Unit and all appurtenances to the Unit. The Condominium contains one hundred and sixty (160) Residential Units.
- 2.33 "Unit Owner" means the record owner of legal title to a Condominium Parcel. A "Residential Unit Owner" is the Unit Owner of a Residential Unit(s).

### **3. DESCRIPTION OF CONDOMINIUM.**

- 3.1 Identification of Units. The Condominium Property consists of the following: (i) the Land and (ii) the Buildings located on the Land and containing one hundred and sixty (160) Residential Units. Each such Residential Unit is identified by a separate numerical designation or alpha-numerical designation indicating the floor on which the Unit is located and its location on such floor. The designation of each such

Residential Unit is set forth on Exhibit "B" attached hereto. Exhibit "B" consists of a survey of the Land, a graphic description of the Improvements located thereon, including but not limited to the Buildings in which the Units are located, and a plot plan thereof. Exhibit "B", together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and approximate dimensions. There shall pass with each Unit as appurtenances thereto (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive right to use such portion of the Common Elements as may be provided in this Declaration; (c) an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, provided that an easement in airspace which is vacated shall be terminated automatically; (d) membership in the Association with the full voting rights appurtenant thereto; and (e) other appurtenances as may be provided in this Declaration or the Act.

3.2 Unit Boundaries. Except as otherwise provided herein, each Unit shall include that part of a Building containing the Unit that lies within the boundaries of the Unit, which boundaries are as follows:

- (a) Upper Boundaries. The upper boundary shall be the horizontal plane(s) formed by the lower interior surface(s) of the unfinished ceiling or roof deck ("ceiling") of the Unit's uppermost story, excluding any ceiling over a Limited Common Element. In a Unit in which that ceiling forms more than one horizontal plane, the upper boundary shall include the plane(s) formed by the unfinished vertical surface(s) that join the horizontal planes.
- (b) Lower Boundaries. The lower boundary shall be the horizontal plane of the upper interior surface of the unfinished floor slab of the Unit's first story, excluding the floor slab of any Limited Common Element;
- (c) Perimetrical Boundaries. The perimetrical boundaries shall be the vertical planes formed by the unfinished interior surfaces (excluding paint, wallpaper and similar coverings) of the walls that bound the Unit (so as to exclude any Limited Common Element), all extended to intersections with other such boundaries (but no further) and with the upper and lower boundaries; provided that whenever any two such boundaries formed by separate walls on the same side of a Unit would pass each other (if not otherwise terminated) without intersecting, then, if they would pass each other within an intervening partition, the boundaries shall be extended only until they intersect with the vertical plane of the center line of the intervening partition and that plane shall be one of the Unit's perimetrical boundaries or, if the walls forming two such boundaries are separated by a door or window, then a plane connecting the boundaries formed by such walls at the point the walls end to accommodate the door or window (as the case may be) shall be a perimetrical boundary of the Unit. As used in this Section 3.2(c) and in Section 7.1, the term "interior surfaces" refers to surfaces which face the interior of the Unit in question, and the phrase "interior surfaces . . . of the walls that bound the Unit" encompasses the interior surfaces of windows, the interior surfaces of doors furnishing access to the Unit from outside the Unit, and any horizontal or vertical planes connecting such surfaces of windows or doors with other types of surfaces that perimetrically bound the Unit.
- (d) Additional Perimetrical Boundaries in Units. In cases in which a perimetrical boundary formed by a wall of the second story of a Unit is not located directly above the perimetrical boundary formed by a wall of the first story of that Unit, the Unit's boundaries include those horizontal planes described below necessary to connect the perimetrical boundary of a first story wall of a Unit to that formed by a second story wall. If the boundaries of the second story are located farther from the Unit's center than the boundaries of the floor immediately underneath the same, the Unit's boundaries shall include the horizontal plane formed by the upper surface of the unfinished floor slab of the second story connecting such perimetrical boundaries. If the boundaries of the second story are located closer to the Unit's center than the boundaries of the floor immediately underneath the same, the Unit's boundaries shall include the horizontal plane formed by the interior surface of the unfinished ceiling of the first story connecting such perimetrical boundaries.
- (e) Apertures and Miscellaneous. Where there are apertures in any boundary, including, but not limited to, windows and doors, such boundaries shall be extended to include the interior sur-

face(s) of such windows, doors and other fixtures located in such apertures, including the interior surfaces of glass or other transparent materials, frameworks, window casings and weather stripping thereof.

- (f) Exceptions. In cases not specifically covered above, and/or in any case of conflict or ambiguity, the survey of the Units set forth as Exhibit "B" hereto shall control in determining the boundaries of a Unit, except the provisions of Section 3.2 above shall control unless specifically reflected otherwise on such survey.
- (g) Property Excluded from Units. A Unit shall not be deemed to include foundations, columns, girders, beams, supports, interior load bearing walls, pillars, underlying floors, essential and permanent installations and equipment for power, lights, and exhaust fans, and all pipes, conduits, ducts, vents and other service and utility lines which are utilized for, serve, or pass through more than one Unit or the Common Elements. All wires, conduits, ducts, vents, concrete joists and other such facilities serving more than one Unit located within any walls or above the nonstructural ceiling and below the upper boundary of the Unit, shall be Common Elements.

3.3 Limited Common Elements. The use and enjoyment of the Limited Common Elements shall be in accordance with the terms and provisions of this Declaration, including, without limitation, the restrictions provided in this Section 3.3 and Article 17 of this Declaration, and the other Condominium Documents. Each applicable Unit or Units shall have the following Limited Common Elements, regardless of whether same are appurtenant to one or more than one Unit:

- (a) Common Elements. To the extent applicable and subject to the provisions of this Declaration, the Residential Units shall have as Common Elements appurtenant to the Residential Units such portions of the Common Elements as are defined in this Declaration and/or shown on Exhibit "B", including, but not limited to: (i) all common hallways, corridors and elevator lobbies serving the Residential Units, mail room, service loading area, administration, manager's office, secretary's office and stairs and stairwells, and electric rooms; (ii) any portion(s) of the Common Elements, including, but not limited to, conduits, ducts, plumbing, wiring and other facilities, for the furnishing of utility and other services solely to the Residential Units; (iii) light and electrical fixtures outside of the Residential Units or attached to the exterior walls of the Residential Units and which solely serve the Residential Units; (iv) the fitness center, club room, recreation deck; and (v) the planters and the flowers, plantings, trees, shrubbery or other landscaping installed by the Association from time to time on portions of the Common Elements. Except as may be otherwise provided in this Declaration, all maintenance, repairs, replacements and reconstruction of, in or to any Common Elements appurtenant to the Residential Units, whether structural or nonstructural, ordinary or extraordinary, shall be performed by the Association and all costs and expenses of such maintenance, repairs, replacements and reconstruction shall be paid by the Residential Unit Owners as Common Expenses.
- (b) Limited Common Elements. To the extent applicable and subject the provisions of this Declaration, each individual Residential Unit shall have as a Limited Common Element appurtenant to the Residential Unit to which they are assigned and which are for the exclusive use of the Residential Unit Owners of that Residential Unit:
  - (i) any porch (and all improvements thereon) as to which direct and exclusive access is afforded to any particular Residential Unit to the exclusion of other Residential Units;
  - (ii) any fixture or equipment serving a Residential Unit exclusively, but located outside of the Residential Unit (such as air conditioning equipment, ducts and facilities related to the delivery of cooling and heating services to a particular Residential Unit);
- (c) Exclusive Use and Transfer of Limited Common Elements. If, after all of the Residential Units have been sold by the Developer, the exclusive use of any Limited Common Element applicable to a Residential Unit was not, for any reason, assigned to the use of a specific Residential Unit(s) by the Developer, the Association may do so. The right of exclusive use of each Limited



Common Element passes with the Residential Unit to which it is assigned, whether or not separately described, and cannot be separated from it.

Anything to the contrary in this Declaration notwithstanding, in the event a Unit Owner mortgages its Unit, together with the Limited Common Elements appurtenant thereto (whether or not ordinarily assignable apart from the Unit), such Limited Common Elements shall not be assignable apart from the Unit to which it is appurtenant unless released from the lien of such mortgage.

- (d) Air Conditioning, Heating and Other Equipment. Notwithstanding the fact that air conditioning and heating equipment or other equipment serving one or more but not all Units, may be Limited Common Elements, the Unit Owner(s) served by such equipment shall be solely responsible for operating, maintaining, repairing and replacing such equipment and for all costs related thereto. Notwithstanding the foregoing, the Association shall have the right to require that all such air conditioning and heating equipment or other equipment be maintained by contractors approved by the Association and meeting such insurance, licensing and other requirements as the Board may reasonably require. In the event that physical changes in Building result in additional Units being served by such equipment or, in the alternative, Units ceasing to be so served, then the equipment shall be a Limited Common Element appurtenant to the Units added and shall cease to be one to the Units deleted.
- (e) Doors and Windows. Each door and window in the Common Element walls bounding that Unit shall be a Limited Common Element reserved for the exclusive use of that Unit. The Association shall be responsible for maintaining the exterior of the doors and windows; however, the Unit Owner shall be solely responsible for maintaining the interior of such windows and doors. The Association shall be responsible for periodic washing of the exterior of the windows in the Common Element walls bounding each Unit as a Common Expense. Except as otherwise provided in the next sentence, each Unit Owner shall be responsible for repairing and replacing the doors and windows in the Common Element walls bounding its Unit, subject to the rights of the Association to review and approve any alterations to the Condominium Property. The Association shall be responsible (i) for the repair or replacement of any doors or windows in the Common Element walls bounding a Unit which are damaged by fire or other casualty; and (ii) for replacement of any doors or windows in the Common Element walls bounding a Unit in the event the Association is replacing all or substantially all of such doors or windows in the Building. Notwithstanding the foregoing, in the event of damage or destruction to any door or window as a result of theft, vandalism, burglary or malicious mischief, the Owner of the Unit to which the door or window is a Limited Common Element shall be responsible for repairing and replacing such door or window.
- (f) Other. Any other portion of the Common Elements which, by its nature, cannot serve all Units but serves one or more Units shall be deemed Limited Common Elements of the Units served. In the event of any doubt or dispute as to whether any portion of the Common Elements constitutes Limited Common Elements or in the event of any question as to which Units are served thereby, a decision shall be made by the Board of Directors and shall be binding and conclusive when so made.

3.4 Easements. The following easements are hereby created (in addition to any easements created under the Act):

- (a) Support. Each Unit, the Buildings and the Improvements shall have an easement of support and of necessity over, under and upon, and shall be subject to an easement of support and necessity in favor of, all other Units, the Common Elements, and any other structure or improvement which abuts any Unit, the Buildings or the Improvements.

- (b) Utility and Other Services; Drainage. (i) Easements are reserved under, through and over the Condominium Property as may be required from time to time for utilities, telecommunications and security systems, and other services and systems and for drainage in favor of the Association and/or entities providing such utilities, telecommunications and security systems, and other services and systems and drainage in order to serve the Condominium Property and/or the members of the Association. Drainage systems on the Condominium Property, if any, shall be maintained continuously in good condition by the Association and easements are granted hereby over all Units in favor of all Owners and the Association with respect thereto.
- (c) Encroachments. If (i) any portion of the Common Elements encroaches upon any Residential Unit (or Residential Common Element or Limited Common Element appurtenant thereto); (ii) any Residential Unit (or Common Element or Limited Common Element appurtenant thereto) encroaches upon any other Residential Unit (or Common Element or Limited Common Element appurtenant thereto) or upon any portion of the Common Elements; (iii) any encroachment shall hereafter occur as a result of (1) construction of a Building and other Common Elements; (2) settling or shifting of a Building or other Common Elements; (3) any alteration or repair to the Common Elements made by or with the consent of the Association or the Developer, as appropriate, or (4) any repair or restoration of the improvements to the Condominium (or any portion thereof) or any Residential Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Residential Unit, or the Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of same so long as the improvements to the Condominium shall stand.
- (d) Ingress and Egress. (i) Developer hereby reserves unto itself and its successors and assigns, and grants to the Association and each Residential Unit Owner and his Tenants, employees, agents, licensees and invitees, a nonexclusive easement for pedestrian traffic over, through and across sidewalks, paths, walks, driveways, hallways, lobbies, elevators and other portions of the Common Elements as may be from time to time intended and designated for such use and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements as may, from time to time be paved and intended for such purposes.
- (e) Construction; Maintenance. The Developer (including its designees, contractors, successors and assigns) shall have the right, in its (and their) sole discretion from time to time, to enter the Condominium Property, or any Improvements or Units located or to be located thereon, and take all other action necessary or convenient for the purpose of completing the construction thereof, or any part thereof, or for any other purpose, provided such activity does not prevent or unreasonably interfere with, in the opinion of the Developer, the use or enjoyment by the Unit Owners of the Condominium Property or otherwise usurp the authority granted the Association herein and/or under the Act.
- (f) Sales and Leasing Activity. For as long as Developer holds any Unit for sale in the ordinary course of business, the Developer, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Elements or Association Property as model units and sales offices, to show the models and the Common Elements to prospective purchasers and tenants of Units, to erect on the Condominium Property and/or Association Property signs and other promotional material to advertise Units for sale or lease and for any other similar purpose the Developer deems appropriate in its opinion.
- (g) Additional Easements. The Association, through its Board, on the Association's behalf and on behalf of all Unit Owners (each of whom hereby appoints the Association irrevocably as its attorney-in-fact for this purpose), shall have the right to grant such additional general ("blanket") and specific access, electric, water, sewer, drainage, gas or other utility, cable television, security systems, telecommunications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or relocate any



such existing utility or service easements or facilities in any portion of the Condominium and/or Association Property, to grant access easements or relocate any existing access easements in any portion of the Condominium Property and/or Association Property, and to grant such other easements as the Association (upon a majority vote of the Board) shall deem necessary or desirable for the proper operation and maintenance of the Improvements, or any portion thereof, or for the general health, welfare or business opportunities of the Unit Owners or their tenants, or for the purpose of carrying out any provisions of this Declaration or otherwise, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for their lawful purposes.

- (h) No Subdivision of Unit. Except as expressly stated to the contrary in this Declaration, no Unit may be divided or subdivided, nor in any manner made into a smaller Unit than that Unit as shown on Exhibit "B".

- 4. RESTRAINT UPON SEPARATION AND PARTITION OF COMMON ELEMENTS.** The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit, and the right to use those Limited Common Elements appurtenant to a Unit, shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, and the exclusive right to use all Limited Common Elements appurtenant to a Unit, except as elsewhere herein provided to the contrary, cannot be conveyed or encumbered except together with the Unit. The respective shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements, the Condominium Property, or any part thereof, shall be permitted, except as provided herein with respect to termination of the Condominium.

**5. OWNERSHIP OF COMMON ELEMENTS AND COMMON SURPLUS AND SHARE OF COMMON EXPENSES; VOTING RIGHTS.**

- 5.1 Percentage Ownership and Shares. The undivided percentage interest in the Common Elements and Common Surplus, and the percentage share of the Common Expenses, appurtenant to each Unit, is as set forth in Exhibit "C" attached hereto. Each Residential Unit's percentage share of the Residential Common Expenses is set forth in Exhibit "C-1" attached hereto.

- 5.1 Voting. Each Unit shall be entitled to cast one indivisible vote. If a Unit Owner owns more than one Unit, the Voting Member for such Units shall be entitled to cast the number of votes for each Unit owned.

**6. AMENDMENTS.** Except as elsewhere provided herein, amendments may be effected as follows:

- 6.1 By the Association. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors of the Association or by Unit Owners holding not less than thirty (30%) percent of the voting interests. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the secretary at or prior to the meeting. Except as elsewhere herein provided, approvals must be by the affirmative vote of Residential Unit Owners holding not less than a majority of the voting interests of the Residential Units present in person or by proxy at a duly called meeting of the Association; provided, however, no amendment may be adopted which adversely affects any of the rights and/or privileges provided to the Developer without the written consent of the Developer.

Unless otherwise provided in this Declaration, all references to Unit Owners holding a majority of the voting interests or such other specified percentage vote of the Unit Owners shall refer to the voting interests cast by those Unit Owners present in person or by proxy at a duly called meeting of the Association at which a quorum is present, and not to the number of Unit Owners voting or to the total voting interests of all Unit Owners.

- 6.2 Material Amendments. Unless otherwise provided specifically to the contrary in this Declaration, no amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, or change the percentage by which the Owner of a Unit shares

the Common Expenses and owns the Common Elements and Common Surplus (any such change or alteration being a "Material Amendment"), unless the record Owner(s) thereof, and all record owners of mortgages thereon, shall join in the execution of the amendment, and such amendment receives the affirmative vote of Unit Owners holding not less than sixty-six percent (66%) of the voting interests present in person or by proxy at a duly called meeting of the Association. No amendment shall allow the creation of time share estates within any Unit unless such amendment receives the affirmative vote of Unit Owners holding not less than sixty-six percent (66%) of the voting interests present in person or by proxy at a duly called meeting of the Association. The acquisition of property by the Association, material alterations or substantial additions to such property or the Common Elements by the Association, the redecoration or renovation of the Association Property or Common Elements, or the installation, replacement and maintenance of approved hurricane shutters, if in accordance with the provisions of this Declaration, shall not be deemed to constitute a material alteration or modification of the appurtenances of the Units, and accordingly, shall not constitute a Material Amendment.

6.3     Mortgagee's Consent. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to mortgagees of Units or make any materially adverse change in the sections hereof entitled "Insurance", "Reconstruction or Repair after Casualty", or "Condemnation" unless the Primary Institutional First Mortgagee shall join in the amendment. Except as specifically provided herein, the consent and/or joinder of any lien or mortgage holder on a Unit shall not be required for the adoption of an amendment to this Declaration and, whenever the consent or joinder of a lien or mortgage holder is required, such consent or joinder shall not be unreasonably withheld or delayed. Whenever the consent or approval of the Primary Institutional First Mortgagee or a mortgagee is required by this Declaration, the Articles, the By-Laws, or any applicable statute or law to any action of the Association or to any other matter relating to the Condominium, the Association, the Board, the Articles, the By-Laws or this Declaration, the Association shall request such consent or approval of such Primary Institutional First Mortgagee or mortgagee by written request. Any Primary Institutional First Mortgagee or mortgagee receiving such request shall be required to consent to or disapprove the matter for which the consent or approval is requested in writing, by certified mail, return receipt requested (or equivalent delivery evidencing such request was delivered to and received by the Association), which response must be received by the Association within thirty (30) days after the Primary Institutional First Mortgagee or mortgagee receives such request. If such response is not timely received by the Association, the Primary Institutional First Mortgagee or mortgagee shall be deemed to have consented to and approved the matter for which such approval or consent was requested. Such consent or approval given or deemed to have been given, where required, may be evidenced by an affidavit signed by a majority of the directors, the President or Secretary of the Association, which affidavit, where necessary, may be recorded in the public records of the County. Such affidavit shall be conclusive evidence that the applicable consent or approval was given as to the matters therein contained.

6.4     By The Developer. Notwithstanding anything herein contained to the contrary, during the time the Developer has the right to elect a majority of the Board of Directors of the Association, the Declaration, the Articles of Incorporation or the By-Laws of the Association may be amended by the Developer alone, without requiring the consent of any other party, to effect any change whatsoever, except for an amendment to effect a Material Amendment or an amendment permitting the creation of time share estates, which must be approved, if at all, in the manner set forth in Section 6.2 above. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer, without the consent of the Developer in each instance.

6.5     Execution and Recording. An amendment, other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association, executed either by the President or Vice President of the Association or a majority of the members of the Board of Directors which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the executed of a deed. An amendment of the Declaration is effective

when the applicable certificate is properly recorded in the Public Records of the County. No provision of this Declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of this Declaration shall contain the full text of the provision to be amended; new words shall be inserted in the text underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision . . . for present text." Nonmaterial errors or omissions in the amendment process shall not invalidate an otherwise properly adopted amendment.

**7. MAINTENANCE AND REPAIRS.** The responsibility for protection, maintenance, repair and replacement of the Condominium Property, and restrictions on its alteration and improvement shall be as follows:

**7.1 Association Maintenance.** Except to the extent (i) expressly provided to the contrary herein, or (ii) proceeds of insurance are made available therefor, the Association is responsible for the protection, maintenance, repair and replacement of all Common Elements and Association Property (other than those Limited Common Elements that are required elsewhere in this Declaration to be maintained by the Unit Owner). The costs of maintaining the Common Elements and the Association Property shall be a Common Expenses. In the event any maintenance, repair and replacement of the Common Elements or Association Property arises from or is necessitated by the negligence, neglect or misuse of specific Unit Owners in the opinion of the Board, the cost and expense of such maintenance, repair and replacement shall be paid solely by such Unit Owners as a Charge. The Association's maintenance responsibilities include, without limitation, the following:

- (a) electrical wiring up to the circuit breaker panel in each Residential Unit;
- (b) as to a Residential Unit, potable water lines up to the cutoff valve within the applicable individual Residential Unit;
- (c) cable television lines up to the CATV pull box located in the Residential Units;
- (d) air conditioning condensation drain lines, up to the point where they enter each Residential Unit, unless only one Residential Unit is served by such condensation drain line;
- (e) as to a Residential Unit, the sewerage collection lines up to the point where they enter a Residential Unit;
- (f) all installations, fixtures and equipment located within one Residential Unit but serving another Residential Unit, or located outside the Unit, for the furnishing of utilities or services to more than one Residential Unit, the Common Elements;
- (g) any controlled access and intercom systems serving the Residential Units;
- (h) the exterior surface of the entrance door to each Residential Unit;
- (i) all exterior Building walls, including painting, waterproofing, and caulking;
- (j) all portions of the Unit contributing to the support of a Building in which it is located, which portions shall include, but not be limited to, all exterior walls of a Building, support columns, concrete slabs, structural elements and load bearing portions of walls and partitions, excluding interior surfaces. The Association's responsibilities do not include interior wall switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within a Unit and serving only that Unit. All incidental damage caused to a Unit or Limited Common Elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as

nearly as practical to its condition before the damage, and the cost of such repair shall be a Common Expense, except the Association shall not be responsible for the damage to any alteration or addition to the Common Elements made by a Unit Owner or his predecessor in title or for damage to paint, wallpaper, paneling, flooring or carpet which, of necessity, must be cut or removed to gain access to work areas located behind them;

- (k) the maintenance of all trees, shrubbery, grass and landscaping, and all parking, pedestrian, recreational and open areas in the Common Elements.

7.2 Unit Owner Maintenance. Each Unit Owner is responsible, at such Unit Owner's own expense, for all maintenance, repairs, and replacements of the Unit Owner's Unit and those Limited Common Elements which are not to be maintained by the Association pursuant to this Declaration.

7.3 Residential Unit Owner Maintenance. The Residential Unit Owner's responsibilities for maintenance include, without limitation, the maintenance, repair and replacement of: (i) the entire Residential Unit, including, without limitation, all maintenance, repair and replacement of screens, windows and window glass and sliding glass doors; (ii) all doors (except as provided in Section 3.3(j)) within or affording access to the Residential Unit, interior surfaces, non load bearing walls, partitions and room dividers; (iii) all built in shelves, cabinets, counters, storage areas and closets; (iv) all electrical, mechanical and plumbing lines, pipes, fixtures, equipment, switches, wires, valves, drains, conduits, ducts, electric lines, outlets (including connections) and other facilities for the furnishing of utility and other services serving exclusively the Residential Unit; (v) the circuit breaker panel and all electrical wiring going into the Residential Unit from the panel; (vi) appliances, water heaters, smoke alarms and vent fans; (vii) all air conditioning, and heating equipment, thermostats, ducts and installations serving the Residential Unit exclusively, except as otherwise provided in Section 3.3(h); (viii) carpeting and other floor coverings; (ix) door and window hardware and locks; (x) shower pans; (xi) the main water supply shut-off valve for the Residential Unit; (xii) all furniture, furnishings and personal property contained within the respective Residential Unit; (xiii) other facilities or fixtures which are located or contained entirely within the Residential Unit and serve only the Residential Unit; (xiv) interior paint, finish, covering, wallpaper and decoration of all walls, floors and ceilings; and (xv) all other maintenance or repair of or replacements involving a Residential Unit as contemplated and authorized under this Declaration.

7.4 Other Residential Unit Owner Responsibilities

- (a) Porches. Where a Residential Limited Common Element consists of a porch, the Residential Unit Owner who has the right of exclusive use of the area shall be responsible for the day to day cleaning and care of the walls, floor and ceiling bounding said area, if any. The Residential Unit Owners shall be responsible for day to day cleaning and care of such Limited Common Element, but all painting and maintenance of the exterior surfaces, roofs and structures of the Building and entry staircases shall be the responsibility of the Association and shall be a Common Expense.
- (b) Interior Decorating. Each Residential Unit Owner is responsible for all decorating within such Unit Owner's Residential Unit, including painting, wallpapering, paneling, floor covering, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating.
- (c) Flooring. All Residential Units shall always have the floors covered with either wall to wall carpeting installed over not less than 6 oz. padding or hardsurface flooring with sound absorbent underlayment as hereinafter described. If a Residential Unit Owner installs any hardsurface flooring (e.g. stained concrete, marble, slate, ceramic tile, wood or parquet), the Unit Owner must also install a sound absorbent underlayment of such kind and quality equivalent or superior to 3 inch of cork and perimeter sound isolation material installed pursuant to this Declaration and the Rules and Regulations as amended from time to time, so as to reduce the transmission of noise to adjoining Units. The use of cork as a floor underlayment material is prohibited. The Residential Unit Owner shall obtain written approval of the Board of Directors prior to any such installation. If the installation is made without prior approval, the Board may,

in addition to exercising all the other remedies provided in this Declaration, require the Residential Unit Owner to cover all such hard-surface flooring with carpeting, or require the removal of such hard-surface flooring at the expense of the offending Unit Owner. EACH RESIDENTIAL UNIT OWNER, BY ACCEPTANCE OF A DEED OR OTHER CONVEYANCE OF HIS RESIDENTIAL UNIT, HEREBY ACKNOWLEDGES AND AGREES THAT SOUND AND IMPACT NOISE TRANSMISSION IN A MULTISTORY BUILDING SUCH AS THE CONDOMINIUM IS VERY DIFFICULT TO CONTROL, AND THAT NOISES FROM ADJOINING OR NEARBY RESIDENTIAL UNITS AND OR MECHANICAL EQUIPMENT CAN AND WILL BE HEARD IN RESIDENTIAL UNITS. THE DEVELOPER DOES NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO THE LEVEL OF SOUND OR IMPACT NOISE TRANSMISSION BETWEEN AND AMONG RESIDENTIAL UNITS AND THE OTHER PORTIONS OF THE CONDOMINIUM PROPERTY, AND EACH RESIDENTIAL UNIT OWNER HEREBY WAIVES AND EXPRESSLY RELEASES, TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW AS OF THE DATE OF THIS DECLARATION, ANY SUCH WARRANTY AND CLAIM FOR LOSS OR DAMAGES RESULTING FROM SOUND OR IMPACT NOISE TRANSMISSION. The structural integrity of balconies and terraces constructed of steel reinforced concrete is adversely affected by water intrusion and rusting aggravated by the water retention qualities of indoor outdoor carpet, river rock and unglazed ceramic tile and its grout. For this reason no indoor outdoor carpet or river rock may be used on balconies or terraces and all tile and its bedding and grout must be of such materials and so applied as to be waterproof. No tile or other hard surface floor covering shall be installed on any balcony or terrace without the prior written approval of the Board of Directors as to the type and color of the proposed tile or other hard surface floor covering. Any flooring installed on the balconies and terraces of a Unit shall be installed so as to insure proper drainage.

- (d) Window Coverings. The covering and appearance of the windows and doors, whether by draperies, shades, reflective film or other items, whether installed within or outside of the Unit, visible from the exterior of the Unit, shall be subject to the Rules and Regulations of the Association.

**8. ADDITIONS, ALTERATIONS OR ALTERATIONS BY THE ASSOCIATION.** Whenever in the judgment of the Board of Directors, the Common Elements, the Association Property, or any part of either, shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of Alterations Limit, as defined below, in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by Unit Owners holding not less than a majority of the voting interests present in person or by proxy at a duly called meeting at which a quorum is attained. The "Alterations Limit" shall be the sum of \$200,000 as adjusted by the CPI. Any such additions, alterations or improvements to such Common Elements, the Association Property, or any part of either, costing in the aggregate less than the Alterations Limit in a calendar year may be made by the Association without approval of the Unit Owners. The cost and expense of any such additions, alterations or improvements to such Common Elements or Association Property shall constitute a part of the Common Expenses and shall be assessed to the Unit Owners as a Common Expense. For purposes of this section, "aggregate in any calendar year" shall include the total debt incurred in that year, if such debt is incurred to perform the above-stated purposes, regardless of whether the repayment of any part of that debt is required to be made beyond that year.

**9. ADDITIONS, ALTERATIONS OR IMPROVEMENTS BY UNIT OWNER.**

- 9.1 Consent of the Board of Directors. No Unit Owner shall make any addition, alteration or improvement in or to the Common Elements, the Association Property, any Unit, or any Limited Common Element without the prior written consent of the Board of Directors. The Board shall have the obligation to answer, in writing, any written request by a Unit Owner for approval of such an addition, alteration or



improvement to a Unit, or Limited Common Element thereof within thirty (30) days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Board's consent. The Board may require, at its sole discretion, a structural engineer, architect, or other professional to review the proposed alterations, with such review to be at the Owner's sole expense. The Board may condition the approval in any manner, including, without limitation, those satisfaction of the requirements described in Section 9.3. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction. Once approved by the Board of Directors, such approval may not be revoked so long as the conditions imposed by the Association are satisfied. A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Owner, and its heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer and all other Unit Owners harmless from and to indemnify them for any costs, claims, damages, expenses, or liabilities to the Condominium, Association Property and/or other Units and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after that date of installation or construction thereof as may be required by the Association. The Association's rights to review and approve of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither the Developer, the Association nor any of their respective officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Unit Owner or any other person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or non-feasance arising out of or in connection with the approval or disapproval of any plans or submissions. Anyone submitting plans hereunder, by the submission of same, and any Unit Owner, by acquiring title to same, agrees not to seek damages from the Developer and/or the Association arising out of the Association's review of any plans hereunder. Without limiting the generality of the foregoing, the Association shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Owner (including the successors and assigns) agrees to indemnify and hold the Association, the Developer and other Unit Owners harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review of plans by the Association hereunder.

Notwithstanding anything herein contained to the contrary, the following alterations and/or improvements shall not require the prior approval of the Association: (i) replacement of any glass window with a window of the same material, color and size; (ii) replacement of an exterior air handler/compressor serving one or more Units, which may be effected by the Owner of any Unit directly served by the applicable air handler (and provided that the installation will not adversely affect any other Unit Owner and the replacement air handler/compressor is placed in the same location as the equipment being replaced).

**9.2** Restrictions on Contractors, Workers. The Board of Directors of the Association shall have the right to adopt restrictions and conditions relating the terms on which construction, repairs, maintenance and replacement within a Building can be performed, including without limitation, the review and approval of plans, design, structural integrity, aesthetic appeal, construction details, lien protection, Association oversight, contractor's access, deliveries, and storage of materials and hours of construction and other matters relating to such work. The Association shall have the right to approve the contractor performing the work, to require that the work be performed only during certain specified hours or only on certain days so as to minimize the disruption and inconvenience to the other Unit Owners, and to require that the contractor fulfill such bonding and insurance requirements as the Board may reasonably require. Any contractor, worker or other person who does not comply with the Association's regulations and requirements regarding construction in and about a Building shall be denied access to the Building and shall not be permitted to perform further work at a Building. The Unit Owner shall further be responsible for any damage done to a Building by any contractor, worker or other person performing work in the Unit and such



damage shall be the subject of a special assessment against the Unit Owner by the Association.

9.3     Improvements, Additions or Alterations by Developer. Anything to the contrary notwithstanding, the foregoing restrictions in this Article 9 shall not apply to Developer-owned Units, work performed by the Developer on behalf of a Unit Owner or the Developer's reconfiguration, expansion, alteration or addition to all or any part of the recreational facilities, Common Elements and Association Property as set forth in Section 10.5, all of which may be performed without the consent or approval of the Board of Directors or other Unit Owners. Any amendment to this Declaration required by a change made by the Developer pursuant to this Section 9.4 shall be effected by the Developer alone pursuant to Section 6.4, without the vote or consent of the Association or Unit Owners (or their mortgagees) required, except to the extent that any of same constitutes a Material Amendment, in which event, the amendment must be approved as set forth in Section 6.2 above. Without limiting the generality of Section 6.4 hereof, the provisions of this Section may not be added to, amended or deleted without the prior written consent of the Developer.

## **10. PROVISIONS PERTAINING TO THE DEVELOPER**

10.1     Construction, Development, Sales. In addition to all other rights granted or reserved to the Developer in this Declaration, the Articles of Incorporation and the By-Laws of the Association, the Developer shall have the right to conduct on the Condominium Property, all operations necessary, in its sole discretion, to complete the construction and development of the Condominium and to market, sell and lease the Units and other improvements within the Condominium Property. Irrespective of any restriction or regulation, the Developer or its agents may enter upon the Condominium Property and operate thereon such vehicles and equipment as shall be necessary in the sole discretion of the Developer or its agents for such purposes. The Developer shall have the right to use any Unit or other portion of the Condominium Property as a model Unit and/or sales office in connection with the Developer's program to sell or lease Units and shall have the right to place upon the Common Elements signs designating the Developer's model condominiums and/or sales office and advertising Units owned by the Developer for sale or lease. Such signs may be placed in such locations and shall be of such size and character as the Developer may determine.

10.2     Representation on Board of Directors; Voting by Developer. So long as and to the extent permitted by the Act, the Developer shall have the right to select and designate members of the Board of Directors of the Association and to remove and replace any person or persons selected by the Association as a member of the Board of Directors, as provided in the Articles of Incorporation and By-Laws. No representative of the Developer serving on the Board of Directors of the Association shall be required to disqualify herself or himself from voting on any contract or other matter between the Developer and the Association notwithstanding any pecuniary or other interest of the Developer. The Developer shall not be disqualified from voting on any matter which may come before the membership of the Association with respect to any contract or other matter between the Developer and the Association, notwithstanding any pecuniary or other interest of the Developer.

10.3     Dissolution or Merger of Developer. In the event of the dissolution of the Developer or its merger or consolidation into any other entity which survives the Developer, all rights of the Developer under this Declaration or any other Condominium Document shall pass to and may be exercised by its successor or survivor.

10.4     Assignability of the Developer's Status. The status, position and rights of the Developer under this Declaration, the Articles of Incorporation and the By-Laws of the Association are freely assignable, in whole or in part, and any party to whom assigned shall be entitled to exercise all of the rights so assigned. The Developer shall have the right to appoint and designate a successor who shall succeed to the status, position and all of the rights and privileges of the Developer under this Declaration by a written instrument identifying and designating such successor executed in recordable form and, upon

the recording of such instrument in the Public Records of the County, the party named as successor shall succeed to all of the rights, privileges, exemptions and immunities of the Developer under this Declaration.

**10.5** Changes in Developer-Owned Units and Common Elements by Developer. Without limiting the generality of the provisions of Section 9.3 above, and anything to the contrary notwithstanding, the Developer shall have the right, without the vote or consent of the Association or Unit Owners, to (i) expand, alter or add to all or any part of the recreational facilities; (ii) make alterations, additions or improvements in, to and upon Units owned by the Developer and any Limited Common Elements appurtenant thereto, whether structural or non-structural, interior or exterior, ordinary or extraordinary; (iii) change the layout or number of rooms in any Developer-owned Units; (iv) change the size of Developer-owned Units by combining separate Developer-owned Units into a single space (although being kept as two separate legal Units), or change the location of the boundaries between Developer-owned Units; or (v) reappportion among the Developer-owned Units affected by such change in size pursuant to the preceding clause, their appurtenant interests in the Common Elements and share of the Common Surplus and Common Expenses; provided, however, that the percentage interest in the Common Elements and share of the Common Surplus and Common Expenses of any Units (other than the affected Developer-owned Units) shall not be changed by reason thereof unless the Owners of such Units shall consent thereto and, provided further, that Developer shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction in so doing. In making the above alterations, additions and improvements, the Developer may expand, add to, relocate or alter Common Elements adjacent to or near such Units, incorporate portions of the Common Elements into adjacent Units and incorporate Units into adjacent Common Elements, provided that such relocation and alteration does not materially adversely affect the market value or ordinary use of Units owned by Unit Owners other than the Developer. Any amendments to this Declaration required by changes of the Developer made pursuant to this Article 10, shall be effected by the Developer alone pursuant to Section 6.4, without the vote or consent of the Association or Unit Owners (or their mortgagees) required, except to the extent that any of same constitutes a Material Amendment, in which event, the amendment must be approved as set forth in Section 6.2 above. Without limiting the generality of Section 6.4 hereof, the provisions of this Section may not be added to, amended or deleted without the prior written consent of the Developer.

## **11. OPERATION OF THE CONDOMINIUM BY THE ASSOCIATION; POWERS AND DUTIES.**

**11.1** Power and Duties. The Association shall be the entity responsible for the operation of the Condominium and the Association Property. The powers and duties of the Association shall include those set forth in the By-Laws and Articles. In addition, the Association shall have all the powers and duties set forth in the Act or other laws, as well as all powers and duties granted to or imposed upon it by this Declaration, including, without limitation:

- (a) The irrevocable right to have access to each Unit from time to time during reasonable hours to administer, maintain, repair and replace the Common Elements and Association Property.
- (b) The power to make and collect Assessments and other charges against Unit Owners and to regulate, administer, maintain, repair and replace the Common Elements and Association Property.
- (c) The duty to maintain accounting records according to accounting practices normally used by similar associations, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times upon prior written request.
- (d) The power to contract for the management and maintenance of the Condominium Property and to authorize a management agent (who/which may be an affiliate of the Developer or the Developer itself) to assist the Association in carrying out its powers and duties by performing

such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of the Common Elements with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Condominium Documents and the Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.

- (e) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, if any, provided that in the event the aggregate amount of principal indebtedness incurred by the Association in any calendar year exceeds the greater of \$200,000, as adjusted by the CPI, or 25% of the Association's budget for the previous year and the Association encumbers Association Property or Association assets to secure such indebtedness then such actions must be approved by Unit Owners holding a majority of the voting interests present in person or by proxy at a duly called meeting of the Association at which a quorum is attained. For purposes of this section, "aggregate amount of principal indebtedness incurred by the Association in any calendar year" shall include the total debt incurred in that calendar year regardless of whether the repayment of any part of the debt is paid or scheduled to be paid in subsequent years.
- (f) The Association, when authorized by Unit Owners holding a majority of the voting interests represented at a duly called meeting of the Association at which a quorum is attained, shall have the power to acquire, convey, lease and encumber personal and real property, whether or not contiguous to the lands of the Condominium. The expenses of ownership (including the expense of making and carrying any mortgage related to such ownership), rental, membership fees, operation, replacements and other expenses and undertakings in connection therewith shall be Common Expenses. Notwithstanding the foregoing, the Association shall be authorized to obtain title to Units through foreclosure of its lien or deed in lieu of foreclosure without the consent of Unit Owners.
- (g) The power to adopt and amend, upon a majority vote of the Board, Rules and Regulations covering the details of the operation and use of the Common Elements.
- (h) The power to employ personnel (part-time or full-time), and if part-time, such personnel may be employees of other condominium associations or property owner associations and the allocation of their compensation shall be equitably apportioned among the associations for which such employee provides services.
- (i) All of the powers which a corporation not for profit in the State of Florida may exercise pursuant to this Declaration, the Articles of Incorporation, the By-Laws, Chapters 607 and 617, Florida Statutes and the Act, in all cases except as expressly limited or restricted in the Act.

In the event of any conflict between the powers and duties of the Association or the terms and provisions of this Declaration, and the Exhibits attached hereto or otherwise, the Declaration shall take precedence over the Articles of Incorporation, By-Laws and applicable Rules and Regulations; the Articles shall take precedence over the By-Laws and applicable Rules and Regulations; and the By-Laws shall take precedence over applicable Rules and Regulations, all as amended from time to time. Notwithstanding anything in this Declaration or its Exhibits to the contrary, the Association shall at all times be the entity having ultimate authority over the Condominium, consistent with the Act.

**11.2     Limitation Upon Liability of Association.** Notwithstanding the duty of the Association to maintain and repair portions of the Condominium Property, the Association shall not be liable to Unit Owners for costs, claims, damages, expenses, or liabilities, other than for the cost of maintenance and repair, caused by

any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations, improvements or other activities done by or on behalf of any Unit Owner(s) regardless of whether or not same shall have been approved by the Association pursuant to Article 9 hereof. Further, the Association also shall not be liable to any Unit Owner or Tenant or to any other person or entity for any property damage, personal injury, death or other liability on the grounds that the Association did not obtain or maintain insurance (or carried insurance with any particular deductible amount) for any particular matter where: (i) such insurance is not required hereby; or (ii) the Association could not obtain such insurance at commercially reasonable costs or upon reasonable terms or as a result of the Association's failure or inability to access a Unit in accordance with Section 11.1(a) above.

11.3     Restraint Upon Assignment of Shares in Assets. The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to its Unit.

11.4     Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of record Owners is specifically required by this Declaration or by law.

11.5     Acts of the Association. Unless the approval or action of Unit Owners, and/or a certain specific percentage of the Board of Directors of the Association, is specifically required in the Condominium Documents or applicable law, all approvals (or actions required or permitted to be given or taken by the Association) shall be given or taken by the Board of Directors, without the consent of Unit Owners, and the Board may so approve or authorize the action through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken hereunder or thereunder, such action or approval may be conditioned in any manner the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal.

11.6     Effect on Developer. If the Developer holds a Unit for sale in the ordinary course of business, none of the following actions may be taken without the prior written approval of the Developer:

- (a)     Assessment of the Developer as a Unit Owner for capital additions, alterations or improvements (as distinguished from repairs or replacements);
- (b)     Any action by the Association that would be detrimental to the sales or leasing of Units by the Developer; provided, however, that an increase in Assessments for Common Expenses without discrimination against the Developer shall not be deemed to be detrimental to the sales of Units.

**12.     DETERMINATION OF COMMON EXPENSES AND FIXING ASSESSMENTS THEREFOR.** The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium, determine the amount of Assessments payable by the Unit Owners to meet the Common Expenses of the Condominium, and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration and the By-Laws. The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the Assessments payable by each of them as determined by the Board of Directors and shall furnish copies of each budget, on which such Assessments are based, to all Unit Owners and (if requested in writing) to their respective mortgagees. The Board shall then adopt such budget, as presented or as amended by them, by a majority vote. The Common Expenses shall include the expenses of and reserves for (if required by law and not lawfully waived or to the extent determined by the Board) the operation, maintenance, repair and replacement of the Common Elements and/or Association Property, costs of carrying out the powers and duties of the Association and any other expenses designated as Common Expenses by the Act, the Condominium

Documents or by the Association. The Common Expenses shall include the expenses of and reserves for (if required by law and not lawfully waived or to the extent determined by the Board) the operation, maintenance, repair and replacement of the Common Elements and/or Association Property and any other expenses designated as Common Expenses by the Act, the Condominium Documents or by the Association. Expenses incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time and need not be restricted or accumulated. Any budget adopted shall be subject to change, upon the approval of such change by the Board to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of this Declaration and the By-Laws.

### **13. COLLECTION OF ASSESSMENTS.**

13.1 Liability for Assessments. A Unit Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all Assessments coming due while it is the Unit Owner. The grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor for its share of the Common Expenses or otherwise up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit against which the Assessments are made or otherwise.

13.2 Special and Capital Improvement Assessment. In addition to Assessments levied by the Association to meet the Common Expenses of the Condominium and the Association, Special Assessments and Capital Improvement Assessments may be levied by the Board and shall be payable by Unit Owners in lump sums or installments, in the discretion of the Board; provided that, if such Special Assessments or Capital Improvement Assessments, in the aggregate in any year, exceed the Alterations Limit or cause the total Assessments levied to exceed 115% of Assessments for the preceding calendar year, the Board must obtain approval of Unit Owners holding a majority of the voting interests represented at a meeting of the Association at which a quorum is attained.

13.3 Default in Payment of Assessments for Common Expenses. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at eighteen percent (18%) per annum from the date due until paid and shall be subject to an administrative late fee in an amount not to exceed the greater of \$25.00 or five percent (5%) of each delinquent installment. The Association has a lien on each Condominium Parcel for any unpaid Assessments on such Parcel, interest thereon and reasonable attorneys' fees and costs incurred by the Association incident to the collection of the Assessments or enforcement of the lien. Except as set forth below, the lien is effective from, and shall relate back to, the date of the recording of this Declaration. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien. The lien shall be evidenced by the recording of a claim of lien in the Public Records of the County, stating the description of the Condominium Parcel, the name of the record Owner, the amount due and the due dates. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by law. No such lien shall continue for a longer period than one (1) year after the claim of lien has been recorded unless, within that one (1) year period, an action to enforce the lien is commenced in a court of competent jurisdiction. The claim of lien shall secure (whether or not stated therein) all unpaid Assessments, interest thereon and costs and attorneys' fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a final judgment of foreclosure thereof. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon payment, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. The Association is entitled to recover its reasonable attorneys' fees incurred for collection of the unpaid Assessments, including without limitation, pre-suit collection efforts, lien foreclosure action or an action to recover a money judgment for unpaid Assessments and any appellate or bankruptcy proceedings.

As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days' prior written notice to the applicable Unit Owner and the recording of a claim of lien, the Association may declare the Assessment installments for the remainder of the budget year in which the claim of lien is filed to be accelerated and immediately due and payable. In the event that the amount of such installments changes during the remainder of the budget year in which the claim of lien is filed, the Unit Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect.

- 13.4     Notice of Intention to Foreclose Lien. No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorneys' fees or costs in connection with the foreclosure. The notice must be given by delivery of a copy of it to the Unit Owner or by certified or registered mail, return receipt requested, addressed to the Unit Owner at the last known address, and upon such mailing, the notice shall be deemed to have been given. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorneys' fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.
- 13.5     Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit during the pendency of a foreclosure proceeding or after a foreclosure judgment has been entered, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit. If the Unit is rented or leased during the pendency of the foreclosure action, the Association is entitled to the appointment of a receiver to collect the rent. The expenses of such receiver shall be paid by the party which does not prevail in the foreclosure action.
- 13.6     Institutional First Mortgagee. An Institutional First Mortgagee who acquires title to a Unit by foreclosure or by deed in lieu of foreclosure is liable for the unpaid Assessments (or installments thereof) that became due prior to the Institutional First Mortgagee's receipt of the deed. However, the Institutional First Mortgagee's liability is limited to the lesser of the following: (i) the Unit's unpaid Common Expenses or Assessments which accrued or came due during the six (6) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or (ii) one (1%) percent of the original mortgage debt. The limitation of this Section apply only if the Institutional First Mortgagee joined the Association as a defendant in the foreclosure action. An Institutional First Mortgagee acquiring title to a Unit as a result of foreclosure or deed in lieu thereof may not, during the period of its ownership of such Unit, whether or not such Unit is unoccupied, be excused from the payment of some or all of the Common Expenses coming due during the period of such ownership.
- 13.7     Certificate of Unpaid Assessments. Within fifteen (15) days after written request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating all Assessments and other monies owed to the Association by the Unit Owner with respect to its Unit. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.
- 13.8     Installments. Regular Assessments shall be collected monthly or quarterly, in advance, at the option of the Association. Initially, Assessments will be collected quarterly.
- 13.9     Application of Payments. Any payments received by the Association from a delinquent Unit Owner shall be applied first to any interest accrued on the delinquent installment(s) as aforesaid, then to any administrative late fees, then to any costs and reasonable attorneys' fees incurred in collection and then to the delinquent and any accelerated Assessments. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instruction placed on or accompanying a payment.



**14. INSURANCE.** Insurance covering the Condominium Property and the Association Property shall be governed by the following provisions:

**14.1 Purchase, Custody and Payment.**

- (a) Purchase. All insurance policies described herein covering portions of the Condominium Property and Association Property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida.
- (b) Approval. Each insurance policy, the agency and company issuing the policy and the Insurance Trustee (if appointed) hereinafter described shall be subject to the approval of the Primary Institutional First Mortgagee in the first instance, if requested thereby.
- (c) Named Insured. The named insured shall be the Association, individually, and as agent for Owners of Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them. The Unit Owners and their mortgagees shall be deemed additional insureds.
- (d) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee (if appointed), and all policies and endorsements thereto shall be deposited with the Insurance Trustee (if appointed). If no Insurance Trustee is appointed, then the payments for losses shall be paid by the insurer to the Association.
- (e) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request to each Institutional First Mortgagee who holds a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.
- (f) Personal Property and Liability. Except as specifically provided herein or by the Act, the Association shall not be responsible to Unit Owners to obtain insurance coverage upon the property lying within the boundaries of their Unit, including, but not limited to, their personal property, and for their personal liability, living expenses or for any other risks not otherwise insured in accordance herewith.

**14.2 Coverage.** The Association shall maintain insurance covering the following:

- (a) Casualty. The Buildings (including all fixtures, installations or additions comprising that part of a Building within the boundaries of the Units and required by the Act to be insured under the Association's policies) and all Improvements located on the Common Elements and the Association Property from time to time, together with all fixtures, building service equipment, personal property and supplies constituting the Common Elements or Association Property (collectively the "Insured Property"), shall be insured in an amount not less than 100% of the full insurable replacement value thereof (subject to reasonable deductibles), excluding foundation and excavation costs. Notwithstanding the foregoing, the Insured Property shall not include, and shall specifically exclude, all furniture, furnishings, Unit floor coverings, wall coverings and ceiling coverings, other personal property owned, supplied or installed by Unit Owners or tenants of Unit Owners, and all electrical fixtures, appliances, air conditioner and heating equipment, water heaters and built-in cabinets, to the extent that any of same are required to be repaired or replaced by the Unit Owners. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.

- (b) Liability. Commercial general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than \$2,000,000 for each accident or occurrence, and \$100,000 for property damage, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa. The Association may also obtain and maintain liability insurance for its directors and officers and for the benefit of the Association's employees.
- (c) Workmen's Compensation and other mandatory insurance, when applicable.
- (d) Flood Insurance covering the Common Elements, Association Property and Units if the Association so elects.
- (e) Fidelity Insurance, if required by the Act or by the Primary Institutional First Mortgagee, covering all persons who control or disburse Association funds, such insurance to be in an amount not less than the greater of (i) the total amount of the reserves plus three (3) times the total monthly Assessments, (ii) the maximum amount of the funds that will be in the custody of the Association or its management agent at any one time, or (iii) such higher amount as may be determined by the Board.
- (f) Association Property. Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Association Property, where such coverage is available.
- (g) Such Other Insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) subrogation against the Association and against the Unit Owners individually and as a group, (ii) to pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, a member of the Board of Directors of the Association, one or more Unit Owners or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance trust agreement will be recognized, that the insurance provided shall not be prejudiced by any act or omissions of individual Unit Owners that are not under the control of the Association, and that the policy shall be primary, even if a Unit Owner has other insurance that covers the same loss.

Every casualty insurance policy obtained by the Association, if required by the Primary Institutional First Mortgagee, shall have the following endorsements: (i) agreed amount and inflation guard and (ii) steam boiler coverage, if applicable.

- 14.3 Additional Provisions. All policies of insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to all of the named insureds, including all mortgagees of Units. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors may (or if required by the Primary Institutional First Mortgagee, shall) obtain an appraisal from a casualty insurance company, or other competent appraiser, of the full insurable replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Section.
- 14.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the costs of fidelity bonding for any management company employee may be paid by such company pursuant to its contract with the Association. Premiums may be financed in such manner as the Board of Directors deems appropriate.
- 14.5 Insurance Trustee; Share of Proceeds. All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the

Insurance Trustee which may be designated by the Board of Directors as provided in Section 14.10 below, and which, if so appointed, shall be a bank or trust company with trust powers, qualified to do business in the State of Florida, or if no Insurance Trustee is designated by the Board of Directors as provided in Section 14.10, then to the Association. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but shares need not be set forth on the records of the Insurance Trustee:

- (a) Insured Property. Proceeds on account of damage to the Insured Property shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each Unit, provided that if the Insured Property so damaged includes property lying within the boundaries of specific Units, that portion of the proceeds allocable to such property shall be held as if that portion of the Insured Property were Optional Property as described in paragraph (b) below.
- (b) Optional Property. Proceeds on account of damage solely to Units and/or certain portions or all of the contents thereof not included in the Insured Property (all as determined by the Association in its sole discretion) (collectively the "Optional Property"), if any is collected by reason of optional insurance which the Association elects to carry thereon (as contemplated herein), shall be held for the benefit of Owners of Units or other portions of the Optional Property damaged in proportion to the cost of repairing the damage suffered by each such affected Owner, which cost and allocation shall be determined in the sole discretion of the Association.
- (c) Mortgagees. No mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

14.6 Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners thereof in the following manner:

- (a) Expenses of the Trust. All expenses of the Insurance Trustee shall be first paid or provision shall be made therefor.
- (b) Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof, remittances to Unit Owners and their mortgagees being payable jointly to them.
- (c) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in Section 14.5 above, and distributed first to all Institutional First Mortgagees in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial owners.
- (d) Certificate. In making distributions to Unit Owners and their mortgagees, the Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their mortgagees and their respective shares of the distribution.

14.7 Association as Agent. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies pur-

chased by the Association and to execute and deliver releases upon the payment of claims.

- 14.8     Unit Owners' Personal Coverage. Unless the Association elects otherwise, the insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within its Unit, nor casualty or theft loss to the contents of an Owner's Unit. It shall be the obligation of the individual Unit Owner, if such Owner so desires, to purchase and pay for insurance as to all such and other risks not covered by insurance carried by the Association.
- 14.9     Benefit of Mortgagees. Certain provisions in this Article 14 entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagee.
- 14.10   Appointment of Insurance Trustee. The Board of Directors of the Association shall have the option in its discretion of appointing an Insurance Trustee hereunder. If the Association fails or elects not to appoint such Trustee within thirty (30) days after a casualty, the Association will perform directly all obligations imposed upon such Trustee by this Declaration, will hold the proceeds of the insurance policies received in escrow, and use the proceeds to repair and/or reconstruct the damaged property at their sole discretion. Fees and expenses of any Insurance Trustee are Common Expenses.
- 14.11   Presumption as to Damaged Property. In the event of a dispute or lack of certainty as to whether damaged property constitutes a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.

## **15. RECONSTRUCTION OR REPAIR AFTER FIRE OR OTHER CASUALTY.**

- 15.1     Determination to Reconstruct or Repair. Subject to the immediately following paragraph, in the event of damage to or destruction of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) and the Insurance Trustee (if appointed) shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments.

If 60% or more of the value of Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) is substantially damaged or destroyed and if Unit Owners owning not less than 75% of the voting interests present in person or by proxy at a duly called meeting of the Association promptly resolve not to proceed with the repair or restoration thereof, the Condominium Property will not be repaired and shall be terminated in accordance with the provisions of Article 20 and the net proceeds of insurance resulting from such damage or destruction shall be and shall be disbursed among all the Unit Owners in the manner provided for disbursement of funds by the Termination Trustee as provided in Article 20 (with respect to proceeds held for damage to the Insured Property other than that portion of the Insured Property lying within the boundaries of the Unit), and among affected Unit Owners in proportion to the damage suffered by each such affected Unit Owner, as determined in the sole discretion of the Association (with respect to proceeds held for damage to that Optional Property, if any, and/or that portion of the Insured Property lying within the boundaries of the Unit).

Whenever in this Section the words "prompt repair" are used, it shall mean that repairs are to begin not more than sixty (60) days from the date (i) that the Insurance Trustee (if appointed) or the Board of Directors notifies Unit Owners that it holds proceeds of insurance on account of such damage or destruction sufficient to pay the estimated cost of such work, or (ii) that the Insurance Trustee (if appointed) or the Board of Directors notifies Unit Owners that it holds proceeds of insurance on account of such damage or destruction together with Assessments (if necessary) sufficient to pay the estimated cost of such work. The Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

- 15.2     Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original Improvements and then applicable building and other codes;

or if not, then in accordance with the plans and specifications approved by the Board of Directors of the Association and then applicable building and other codes, and, if the damaged property which is to be altered is the Building or the Optional Property, by Unit Owners owning not less than 60% of the voting interests present in person or by proxy at a duly called meeting of the Association, as well as the Owners of all Units and other portions of the Optional Property the plans for which are to be altered.

15.3     Special Responsibility. If the damage is only to those parts of the Optional Property for which the responsibility of maintenance and repair is that of the respective Unit Owners, then the Unit Owners shall be responsible for all necessary reconstruction and repair, which shall be effected promptly and in accordance with guidelines established by the Board of Directors (unless insurance proceeds are held by the Association with respect thereto by reason of the purchase of optional insurance thereon, in which case the Association shall have the responsibility to reconstruct and repair the damaged Optional Property, provided the respective Unit Owners shall be individually responsible for any amount by which the cost of such repair or reconstruction exceeds the insurance proceeds held for such repair or reconstruction on a Unit by Unit basis, as determined in the sole discretion of the Association). In all other instances, the responsibility for all necessary reconstruction and repair shall be that of the Association.

15.4     Disbursement. The proceeds of insurance collected on account of a casualty, and the sums collected from Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

- (a)     Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than \$200,000, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the Association; provided, however, that upon request to the Insurance Trustee (if appointed) and the Association by an Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage.
- (b)     Association - Major Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than \$200,000, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by subparagraph (i) above, but then only upon the further approval of an architect or engineer qualified to practice in Florida and retained by the Association to supervise the work.
- (c)     Unit Owners. If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance may be used by the Association to effect repairs to the Optional Property (if not insured or if under-insured), or may be distributed to Owners of the Optional Property who have the responsibility for reconstruction and repair thereof. The distribution shall be in the proportion that the estimated cost of reconstruction and repair of such damage to each affected Unit Owner bears to the total of such estimated costs to all affected Unit Owners, as determined by the Board; provided, however, that no Unit Owner shall be paid an amount in excess of the estimated costs of repair for its portion of the Optional Property. All proceeds must be used to effect repairs to the Optional Property, and if insufficient to complete such repairs, the Owners shall pay the deficit with respect to their portion of the Optional Property and promptly affect the repairs. Any balance remaining after such repairs have been effected shall be distributed to the affected Unit Owners and their mortgagees jointly as elsewhere herein contemplated.
- (d)     Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner

elsewhere stated; except, however, that part of a distribution to an Owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable jointly to any mortgagee.

(e) Certificate. Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine (1) whether or not sums paid by Unit Owners upon Assessments shall be deposited by the Association with the Insurance Trustee, (2) determine whether the disbursements from the construction fund are to be made upon the order of the Association alone or upon the additional approval of an architect, engineer or otherwise, (3) whether a disbursement is to be made from the construction fund, (4) whether surplus funds to be distributed are less than the Assessments paid by Owners, or (5) the payees or the amounts to be paid. The Insurance Trustee may rely upon a certificate of the Association, made by its President and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the names of the payees and the amounts to be paid.

15.5 Assessments. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, the Association shall impose Assessments against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to the Insured Property shall be in proportion to all of the Owners' respective shares in the Common Elements, and on account of damage to the Optional Property, the Association shall charge the Owner (but shall not levy an Assessment) in proportion to the cost of repairing the damage suffered by each Owner thereof, as determined by the Association.

15.6 Benefit of Mortgagees. Certain provisions in this Article 15 are for the benefit of mortgagees of Units and may be enforced by any of them.

## **16. CONDEMNATION.**

16.1 Deposit of Awards with Insurance Trustee. The taking of portions of the Condominium Property or Association Property by the exercise of the power of eminent domain shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Insurance Trustee; and in the event of failure to do so, in the discretion of the Board of Directors of the Association, a charge shall be made against a defaulting Unit Owner in the amount of its award, or the amount of that award shall be set off against the sums hereafter made payable to that Owner.

16.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by eminent domain also shall be deemed to be a casualty.

16.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the awards and Special Assessments will be deemed to be insurance proceeds and shall be owned in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty as provided in Article 20 of this Declaration and shall be disbursed in the manner provided for disbursement of funds by the Termination Trustee as provided in Article 20. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of the awards and Special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee (if appointed) after a casualty, or as elsewhere in this Article 16 specifically provided.

16.4 Unit Reduced but Habitable. If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable (in the sole opinion of the Association), the award for the taking of a portion



of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:

- (a) Restoration of Unit. The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be charged to and paid by the Owner of the Unit.
- (b) Distribution of Surplus. The balance of the award in respect of the Unit, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and such mortgagees.
- (c) Adjustment of Shares in Common Elements. If the floor area of the Unit is reduced by the taking, the percentage representing the share in the Common Elements and of the Common Expenses and Common Surplus appurtenant to the Unit shall be reduced by multiplying the percentage of the applicable Unit prior to reduction by a fraction, the numerator of which shall be the area in square feet of the Unit after the taking and the denominator of which shall be the area in square feet of the Unit before the taking. The shares of all Unit Owners in the Common Elements, Common Expenses and Common Surplus shall then be restated as follows:
  - (i) add the total of all percentages of all Units after reduction as aforesaid (the "Remaining Percentage Balance"); and
  - (ii) divide each percentage for each Unit after reduction as aforesaid by the Remaining Percentage Balance.

The result of such division for each Unit shall be the adjusted percentage for such Unit.

16.5 Unit Made Uninhabitable. If the taking is of the entire Unit or so reduces the size of a Unit that it cannot be made habitable (in the sole opinion of the Association), the award for the taking of the Unit shall be used for the purposes in the order stated and the following changes shall be made to the Condominium:

- (a) Payment of Award. The awards shall be paid first to the applicable Institutional First Mortgagees in amounts sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, to the Association for any due and unpaid Assessments; third, jointly to the affected Unit Owners and other mortgagees of their Units. In no event shall the total of such distributions in respect of a specific Unit exceed the market value of such Unit immediately prior to the taking. The balance, if any, shall be applied to repairing and replacing the Common Elements.
- (b) Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Unit Owners in the manner approved by the Board of Directors of the Association; provided that if the cost of the work therefor shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required for capital improvements to the Common Elements.
- (c) Adjustment of Shares. The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Unit Owners (and among reduced Units). This shall be effected by restating the shares of continuing Unit Owners as follows:
  - (i) add the total of all percentages of all Units of continuing Owners prior to this adjustment, but after any adjustments made necessary by Section 16.4(c) hereof (the "Percentage Balance"); and
  - (ii) divide the percentage of each Unit of a continuing Owner prior to this adjustment, but after any adjustments made necessary by Section 16.4(c) hereof, by the Percentage Balance.

The result of such division for each Unit shall be the adjusted percentage for such Unit.

- (d) Assessments. If the balance of the award (after payments to the Unit Owner and such Owner's mortgagees as above provided) for the taking is not sufficient to alter the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all of the Unit Owners who will continue as Owners of Units after the changes in the Condominium effected by the taking. The Assessments shall be made in proportion to the applicable percentage shares of those Owners after all adjustments to such shares effected pursuant hereto by reason of the taking.
- (e) Arbitration. If the market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner and mortgagees of the Unit and the Association within thirty (30) days after notice of a dispute by any affected party, such value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit. A judgment upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code. The cost of arbitration proceedings shall be assessed against all Units Owners, including Owners who will not continue after the taking, in proportion to the applicable percentage shares of such Owners as they exist prior to the adjustments to such shares effected pursuant hereto by reason of the taking.

16.6 Taking of Common Elements. Awards for the taking of Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the Board of Directors of the Association; provided, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for capital improvements to the Common Elements. The balance of the awards for the taking of Common Elements, if any, shall be distributed to the Unit Owners in the shares in which they own the Common Elements after adjustments to these shares effected pursuant hereto by reason of the taking. If there is a mortgage on a Unit, the distribution shall be paid jointly to the Owner and the mortgagees of the Unit.

16.7 Amendment of Declaration. The changes in Units, in the Common Elements and in the ownership of the Common Elements and share in the Common Expenses and Common Surplus that are effected by the taking shall be evidenced by an amendment to this Declaration that is only required to be approved by, and executed upon the direction of, a majority of all Directors of the Association and shall not require the consent or joinder of the Unit Owners.

**17. OCCUPANCY AND USE RESTRICTIONS.** In order to provide for congenial occupancy of the Condominium and Association Property and for the protection of the values of the Units, the Condominium Property shall used and occupied be in accordance with the following provisions:

**17.1** Occupancy and Leasing Restrictions.

Residential Units.

- (a) Residential Use Only. Use and occupancy of the Residential Units is restricted to residential uses only. These use restrictions shall not be construed in such a manner as to prohibit a Residential Unit Owner from maintaining his or her personal professional library, keeping his personal business or professional records or accounts or handling his or her personal, business or professional telephone calls, facsimile or correspondence in and from his or her Unit. Such uses are expressly declared customarily incident to the principal residential use. Notwithstanding the foregoing, the Developer, its successors and assigns, shall be permitted to use Residential Units which the Developer owns or leases as model apartments, as sales or other offices or management services, or for overnight accommodations by its designees.
- (b) Leasing. The minimum leasing period for a Residential Unit is six (6) months and one (1) day. No deviation of this restriction may be made without the prior written consent of the Board which may be withheld in its sole discretion. Notwithstanding, any other provision hereof, this provision shall not apply to Developer Owner Units, or leases or tenancies that existed of the time of conveyance of any Unit by the Developer to an Owner.

- (c) Number of Occupants. Residential Units may be occupied by not more than two (2) natural persons per bedroom in each Unit.
  - (d) Guests. Occupancy by Guests in the absence of the Residential Unit Owner is limited to two (2) times per calendar year for maximum periods of thirty (30) consecutive days.
- 17.2 Multiple Owners. Consistent with this Article 17, de facto time sharing of Residential Units shall not be permitted and approval will not be given for the sale or lease of a Residential Unit or an interest in a Residential Unit to multiple persons such as (e.g. siblings or business associates), who may intend that they and their families would split occupancy of the Residential Unit into different time periods during the year.
- 17.3 Lawful Use. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair upon Condominium Property shall be the same as the responsibility for the repair and maintenance of the property as expressed earlier in this Declaration.
- 17.4 Rules and Regulations. The Rules and Regulations may be amended from time to time by the Board of Directors. Copies of the regulations and amendments shall be furnished by the Association to all Unit Owners. No new or amended regulation may be enforced prior to distribution to the Unit Owners. Changes in the Rules and Regulations shall not be required to be recorded in the Public Records of the County, Florida.
- 17.5 Pet Restrictions.
  - (a) Residential Units. No animals or pets may be kept in any Residential Unit or brought upon the Condominium Property by any Residential Unit Owner other than dogs, cats, fish and birds which are usually and commonly kept as household pets. Household pets may be maintained in a Residential Unit provided that such pets are (i) permitted to be so kept by applicable laws and regulations, (ii) controlled by the Owner at all times when on the Common Elements and Association Property, (iii) not left unattended on balconies or terraces, (iv) quiet and inoffensive and generally, not a nuisance to residents of other Units or of neighboring buildings; and (v) not being kept or raised for commercial purposes. Neither the Developer, Board nor the Association shall be liable for any personal injury, death or property damage resulting from a violation of the foregoing and any Occupant of a Unit committing such a violation shall fully indemnify and hold harmless the Board of Directors, the Developer, each Unit Owner and the Association in such regard. Without limiting the generality of Article 19 hereof, a violation of the provisions of this paragraph shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Unit Owners (as provided in the By-Laws and any applicable Rules and Regulations) and/or to require any pet to be permanently removed from the Condominium Property. No pets shall be maintained in any storage spaces. Pets shall be limited to two (2) household pets (dogs or cats or as otherwise specifically permitted by the Association) per Residential Unit. Notwithstanding the foregoing, no dogs of the pit bull breed shall be kept in or on the Condominium Property (including the Units). No reptiles, insects or wildlife shall be kept in or on the Condominium Property (including the Units). No Guest in any Residential Unit shall be permitted to keep any pet in or on the Condominium Property (including the Units) unless authorized in writing by the Developer or the Association.
- 17.6 Exclusive Use of Residential Common Elements. The Association may permit for reserved use to Residential Unit Owners for appropriate temporary periods of time those portions of the Residential Common Elements rationally appropriate and desirable for exclusive use, for example, but not by way of limitation, the sun deck, recreation deck, club room and restroom facilities.
- 17.7 Signage. No Unit Owner shall inscribe, affix, paint or display any sign, advertisement or notice upon

the Common Elements, upon any interior space so as to be seen through the windows, or upon the windows of the Unit or elsewhere within a Building except on the Signage Easement Area, and then only in such place, number, size, color and style as is permitted under this Declaration. No sign of any kind shall be permitted to be placed on any fences on the Condominium Property, on the Common Elements, in dedicated areas, in entryways, or on any vehicles within the Condominium Property.

17.8     Nuisances. No person shall engage in any practice, exhibit any behavior, nor permit any condition to exist that constitutes a nuisance or will become an unreasonable source of annoyance or disturbance to any Occupant of the Condominium.

17.9     Prohibition of Increases in Insurable Risks and Certain Activities. Nothing shall be done or kept in any Unit or in or on the Common Elements, or any part thereof, which would result in the cancellation of the insurance on all or any part of the Condominium or in an increase in the rate of the insurance on all or any part of the Condominium over what the Association, but for such activity, would pay, without the prior written approval of the Association. Nothing shall be done or kept in any Unit or in or on the Common Elements which would be in violation of any statute, rule, ordinance, regulation, permit or other imposed requirement of any governmental body. No damage to or waste of the Common Elements shall be committed by any Owner, or by any member of the Owner's family, or by any guest, invitee, customer, contractor, tenant, employee or agent of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by such Owner, the members of such Owner's family, or such Owner's guests, invitees, customers, contractors, tenants, employees or agents. Failure to so indemnify shall be a default by such Owner under this Section, and such amount to be indemnified shall automatically become a Charge against such Unit Owner.

17.10   Commercial Trucks, Trailers, Vans, Campers and Boats. Restrictions, if any, on commercial trucks, trailers, campers and boats (particularly as to the parking or storage thereof) shall be imposed and enforced by the Association; provided, however, that no commercial trucks, trailers, vans, campers or boats or motor vehicles with any commercial signage, logo or advertising, shall be parked or stored within the Common Elements if the Association prohibits such parking or storage by regulation or otherwise.

Subject to applicable laws and ordinances, any vehicle parked in violation of these or other restrictions contained herein or in the Rules and Regulations now or hereafter adopted may be towed by the Association at the sole expense of the owner of such vehicle. The Association shall not be liable to the owner of such vehicle for trespass, conversion or otherwise, nor guilty of any criminal act, by reason of such towing and once the notice is posted, neither its removal, nor failure of the owner to receive it for any other reason, shall be grounds for relief of any kind. For purposes of this paragraph, "vehicle" shall also mean campers, mobile homes and trailers. An affidavit of the person posting the aforesaid notice stating that it was properly posted shall be conclusive evidence of proper posting.

17.11   Garbage and Trash Disposal. No garbage, refuse, trash or rubbish shall be deposited except as permitted by the Association. The requirements from time to time of the applicable governmental authority, trash collection company or the Association (which may, but shall not be required to, provide solid waste removal services) for disposal or collection of waste shall be complied with. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

17.12   Alterations. Without limiting the generality of Section 9.1 hereof, but subject to Article 11 hereof, no Unit Owner shall cause or allow improvements or changes to any Unit, Limited Common Elements appurtenant thereto, Common Elements or Association Property, including, but not limited to, installing any electrical wiring, television antenna, machinery, window film, or air conditioning units, which in any manner change the appearance of any portion of the Building, without obtaining the prior written consent of the Association (in the manner specified in section 9.1 hereof).

17.13   Use of Common Elements and Association Property. The Common Elements and Association Property shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Units.

17.14   Nuisances. No nuisances (as defined by the Association) shall be allowed on the Condominium

Property or Association Property, nor shall any use or practice be allowed which is a source of annoyance to occupants of Units or which interferes with the peaceful possession or proper use of the Condominium Property and/or Association Property by its Owners, tenants, occupants or members.

17.15 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium Property or Association Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the condominium and/or Association Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth. Notwithstanding the foregoing and any provisions of the Condominium Documents, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Section 17.16. No activity specifically permitted by this Declaration shall be deemed to be a violation of this Section.

17.16 Exterior Improvements. Without limiting the generality of Sections 9.1 or 17.3 hereof, but subject to any provision of this Declaration specifically permitting same, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors or windows of a Building (including, but not limited to, awnings, signs, storm shutters, screens, window tinting, furniture, fixtures and equipment) without the prior written consent of the Association.

17.17 Association Access to Units. In order to facilitate access to Units by the Association for the purposes enumerated in Section 11.1(a) hereof, it shall be the responsibility of all Unit Owners to deliver a set of keys to their respective Units to the Association to use in the performance of its functions. No Owner shall change the locks to its Unit without so notifying the Association and delivering to the Association a new set of keys to such Unit.

17.18 Hurricane Shutters. The Board of Directors shall, from time to time, establish hurricane shutter specifications which comply with the applicable building code, and establish permitted colors, styles and materials for hurricane shutters. Subject to the provisions of Section 9.1 above, the Association shall approve the installation or replacement of hurricane shutters conforming with the Board's specifications. A Unit Owner or Tenant who plans to be absent or closed for business during all or any portion of the hurricane season must prepare its Unit prior to its departure by designating a responsible firm or individual to care for its Unit should a hurricane threaten the Unit or should the Unit suffer hurricane damage, and furnishing the Association with the name(s) of such firm or individual. Such firm or individual shall be subject to the approval of the Association.

17.19 Relief by Association. The Association shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this Article 17 for good cause shown.

17.20 Effect on Developer. The restrictions and limitations set forth in this Article 17 (other than those set forth in Sections 17.6 and 17.11) shall not apply to the Developer nor to Units owned by the Developer.

**18. SELLING, LEASING AND MORTGAGING OF UNITS.** No Unit Owner other than the Developer may sell, lease, give or otherwise transfer ownership of a Unit except by complying with the following provisions:

18.1 Association Approval Required. Except for sales by or to the Developer, no Unit Owner may sell, lease, give or otherwise transfer ownership of a Unit or any interest therein in any manner without the prior written approval of the Association. Such approval shall be evidenced by a written instrument in recordable form (except for Leases) which shall include, without limitation, the nature of the transfer, the parties to the transaction (sellers, purchasers, etc.), the Unit number, the name of the Condominium and the Official Record Book (O.R. Book) and Page numbers in which this Declaration was originally recorded. For all Unit transfers of title other than from the Developer, the approval shall be recorded in the Public Records of the County with the Deed or other instrument transferring title to the Unit. Each new Unit Owner receiving a conveyance from any party except the Developer shall notify the Association promptly after becoming a new Owner by delivering a copy of the deed to the Unit to the Association.

18.2     Leases. Leasing of Units thereof shall be subject to the approval of the Association. The Association's approval of a Lease need not be recorded. All Leases must provide, and if they do not, shall be deemed to provide the agreement of the Tenant(s) to abide by all of the Condominium Documents as promulgated and amended from time to time. A violation of any of the terms of any of the foregoing documents shall constitute a material breach of the Lease and shall constitute grounds for damages, termination and eviction. Every Lease shall be in writing, shall require that a copy of the Lease to be submitted to the Association as a precondition of the tenant being permitted to occupy the Unit, and shall provide (and if not expressly in the written Lease, if any, shall be deemed to provide) that the Association shall have the right (i) to terminate the Lease in the event the tenant fails to observe any of the provisions of the Condominium Documents, and (ii) to collect all rental payments due to the Owner and apply same against unpaid Assessments if, and to the extent that, the Unit Owner is in default in the payment of Assessments. Regardless of whether or not expressed in the applicable Lease, if any, a Unit Owner shall be jointly and severally liable to the Association for the acts and omissions of its Tenant(s) and Occupant(s) which constitute a violation of, or non-compliance with, the provisions of this Declaration and of any and all Rules and Regulations of the Association. If such costs and fees are not immediately paid by the lessee(s), the Unit Owner shall pay them and such funds shall be secured as a Charge. All Leases are hereby made subordinate to any lien filed by the Condominium Association, whether prior or subsequent to such Lease. If so required by the Association, Unit Owners wishing to lease their Units shall be required to place in escrow with the Association a reasonable sum, not to exceed the equivalent of one (1) month's rental, which may be used by the Association to repair any damage to the Common Elements and/or Association Property resulting from acts or omissions of tenants (as determined in the sole discretion of the Association).

18.3     Devise or Inheritance. If any Unit Owner shall acquire title by devise or inheritance or in any other manner not heretofore considered, the continuance of its ownership shall be subject to the approval of the Association. Such Unit Owner shall give the Association notice of the acquisition of its title together with such additional information concerning the Unit Owner as the Association may reasonably require together with a copy of the instrument evidencing the Unit Owner's title. If such notice is not given, the Association at any time after receiving knowledge of such transfer, may approve or disapprove the transfer of ownership.

18.4     Approval Procedure. The approval of the Association shall be obtained as follows:

- (a)     Not later than thirty (30) days before the proposed transfer of ownership occurs, or fifteen (15) days before the first day of occupancy under a proposed Lease, the Unit Owner shall give the Association written notice of its intention to sell, lease or transfer its interest in any fashion. The notice shall include the name and address of the proposed acquirer or tenant and a correct and complete copy of the proposed documents to be executed to effectuate the transaction. The Association may require such other and further information as it deems reasonably necessary and may impose a transfer fee not to exceed the greater of \$100.00 or such higher amount as is permitted by law from time to time.
- (b)     The Association must, within fifteen (15) days after receipt of all the information required by it, either approve or disapprove for cause the proposed transfer of ownership or the proposed Lease. In the case of disapproval for cause of the proposed transfer of ownership, upon the written demand of the Unit Owner, the Association shall furnish an alternate purchaser it approves or the Association may itself elect to purchase the Unit, and the Unit Owner shall be compelled to sell the Unit to such alternate purchaser or to the Association upon the same terms set forth in the proposal given the Association. In exercising its power of disapproval the Association shall act in a manner that is neither arbitrary nor unlawfully discriminatory and withhold approval only for a reason or reasons rationally related to the protection, preservation use and enjoyment of other Unit Owners and tenants and proper operation of the Condominium. If the Association fails or refuses within the allotted time to notify the Unit Owner of either approval or disapproval in writing, or if it fails to provide an alternate purchaser or make an election to purchase the Unit itself when required to do so, then the Association shall conclusively be presumed to have approved the transaction, and the Association shall, upon demand, pro-



vide a recordable certificate of approval. In any such case, the Association shall have no responsibility for the Unit Owner's costs, brokerage fees, attorneys' fees and costs or any other claims related to a delay or failure in closing of the sale or lease of the respective Unit.

- (c) If the Association provides an alternative purchaser, the sale shall be closed within 60 days after an alternate purchaser has been furnished or the Association has elected to purchase.
- (d) If the Association disapproves the proposed transaction (subject to the qualifications contained in Section 18.4(b)) notice of disapproval shall be promptly sent in writing to the Unit Owner or interest holder, and the transaction shall not be completed.

**18.5** Unapproved Transactions. Any purported sale or lease of a Unit in violation of this Article 18 shall be voidable at any time at the election of the Association and if the Board of Directors shall so elect, the Unit Owner shall be deemed to have authorized and empowered the Association to institute legal proceedings to void the conveyance. Said Unit Owner shall reimburse the Association for all expenses (including attorneys' fees and disbursements) incurred in connection with such proceedings.

**18.6** No Severance of Ownership. No part of the Common Elements may be sold, conveyed or otherwise disposed of, except as an appurtenance to the Unit in connection with a sale, conveyance or other disposition of the Unit to which such interest is appurtenant, and any sale, conveyance or other disposition of a Unit shall be deemed to include that Unit's appurtenant interest in the Common Elements.

**18.7** Financing of Purchase of Units by the Association. The purchase of any Unit by the Association shall be made on behalf of all Unit Owners. If the available funds of the Association are insufficient to effectuate any such purchase, the Board of Directors may levy an Assessment against each Unit Owner in proportion to its share of the Common Expenses, and/or the Board of Directors may, in its discretion, finance the acquisition of such Unit; provided, however, that no such financing may be secured by an encumbrance or hypothecation of any portion of the Condominium Property other than the Unit to be purchased.

**18.8** Exceptions.

- (a) The provisions of Sections 18.1, 18.2, 18.3 and 18.4 shall not apply with respect to any lease, sale or conveyance of any Unit by (i) Association, (ii) any proper officer conducting the sale of a Unit in connection with the foreclosure of a mortgage or other lien covering such Unit or delivering a deed in lieu of foreclosure, or (iii) an Institutional First Mortgagee (or its designee) acquiring title by virtue of foreclosure of its mortgage or acceptance of a deed in lieu of foreclosure of its mortgage or in satisfaction of debt; provided, however, that each succeeding Unit Owner shall be bound by, and its Unit subject to, the provisions of Article 18.
- (b) The provisions of Sections 18.1, 18.3 and 18.4 shall not apply with respect to any sale or conveyance of any Unit by the Developer.

**18.9** Mortgage of Units. Each Unit Owner shall have the right to mortgage its Unit without restriction.

**19. COMPLIANCE AND DEFAULT.** The Association, each Unit Owner, occupant of a Unit, tenant and other invitee of a Unit Owner shall be governed by and shall comply with the terms of this Declaration and all exhibits annexed hereto, and the Rules and Regulations adopted pursuant to those documents, as the same may be amended from time to time and the provisions of all of such documents shall be deemed incorporated into any lease of a Unit whether or not expressly stated in such lease. A Unit Owner and/or tenant of a Unit shall be liable for the expense of any maintenance, repair or replacement made necessary by its negligence or by that of any guests, invitees, employees, agents or tenants, but only to the extent such expense is not met by the proceeds of insurance actually collected in respect of such negligence by the Association. In the event a Unit Owner, tenant or occupant fails to maintain a Unit or fails to cause such Unit to be maintained, or fails to observe and perform all of the provisions of the Declaration, the By-Laws, the Articles of Incorporation of the Association, applica-

ble Rules and Regulations, or any other agreement, document or instrument affecting the Condominium Property or administered by the Association, in the manner required, the Association shall have the right to proceed in equity to require performance and/or compliance, to impose any applicable fines, to sue at law for damages, and to charge the Unit Owner for the sums necessary to do whatever work is required to put the Unit Owner or Unit in compliance, provided, however, that nothing contained in this Article 19 shall authorize the Association to enter a Unit to enforce compliance. In any proceeding arising because of an alleged failure of a Unit Owner, a tenant or the Association to comply with the requirements of the Act, this Declaration, the By-Laws, the Articles or the Rules and Regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees). A Unit Owner prevailing in an action with the Association, in addition to recovering its reasonable attorneys' fees, may recover additional amounts as determined by the court to be necessary to reimburse the Unit Owner for its share of Assessments levied by the Association to fund its expenses of the litigation.

## **20. TERMINATION OF CONDOMINIUM.**

20.1 Termination. The Condominium shall continue until (i) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (ii) such time as withdrawal of the Condominium Property from the provisions of the Act is authorized by Unit Owners holding not less than seventy-five (75%) percent of the voting interests present in person or by proxy at a duly called meeting of the Association and by the Primary Institutional First Mortgagee.

20.2 Process of Termination. Termination of the Condominium shall occur when a Certificate of Termination meeting the requirements of this Section and the Act is recorded in the Public Records of the County.

- (a) The termination of the Condominium shall be evidenced by a Certificate of Termination, executed by the President or Vice-President with the formalities of a deed, and certifying as to the facts effecting the termination. The Certificate shall also include the name and address of a Florida financial institution with trust powers, or a licensed Florida attorney, who is designated by the Association to act as the termination trustee (the "Termination Trustee"), shall grant the Termination Trustee all of the powers and authority of a trustee under Section 689.071, Florida Statutes (2003) and shall be signed by the Termination Trustee indicating willingness to serve in that capacity.
- (b) The recording of a Certificate of Termination shall automatically divest the Association of title to all Association Property, and divest all Unit Owners of legal title to their respective Condominium Parcels, and shall vest legal title in the Termination Trustee named in the Certificate of Termination, as a trustee under Section 689.071, Florida Statutes, to all real and personal property which was formerly the Condominium Property or Association Property, without need for further conveyance. Beneficial title to the former Condominium Property and Association Property shall be transferred to the former Unit Owners as tenants in common, in the same undivided shares as each Unit Owner previously owned in the Common Elements, without further conveyance. Each lien encumbering a Condominium Parcel shall be automatically transferred to the equitable interest in the former Condominium Property and Association Property attributable to the Unit encumbered by the lien, with the same priority.

20.3 Wind-up of Association Affairs. The termination of the Condominium shall not, by itself, terminate the Association. The former Unit Owners and their successors and assigns shall continue to be members of the Association, and the members of the Board of Directors and the officers of the Association shall continue to have the powers granted in this Declaration, the Articles of Incorporation, the By-Laws and the Act, to the extent necessary to, and for the sole purpose of, winding up the affairs of the Association in accordance with this Section.

20.4 Trustee's Powers and Duties. The Termination Trustee shall hold legal title to the Condominium Property or Association Property or both, as a trustee under Section 689.071, Florida Statutes, for the benefit of the former Unit Owners and their successors, assigns, heirs, devisees, mortgagees and other lien holders, as their interests shall appear. If the former Unit Owners approve a sale of the Condominium

Property or Association Property or both as provided in this Section, the Termination Trustee shall have the power and authority to convey title to the purchaser(s), and to distribute the proceeds in accordance with the provisions of this Section. The Termination Trustee may charge a reasonable fee for acting in such capacity, and such fee, as well as all costs and expenses incurred by the Termination Trustee in the performance of its duties, shall be paid by the Association or taken from the proceeds of the sale of the former Condominium Property and Association Property, and shall constitute a lien on the Condominium Property or Association Property or both superior to any other lien. The Termination Trustee shall be entitled to indemnification by the Association from any and all liabilities and costs incurred by virtue of acting as Termination Trustee unless such liabilities are the result of gross negligence or willful misconduct.

- 20.5     Post Termination Obligations. Unless otherwise specified in the Certificate of Termination, as long as the Termination Trustee shall hold legal title to the Condominium Property, each Unit Owner and the Unit Owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the Unit. During the period of that occupancy, each Unit Owner and the Unit Owner's successors in interest remain liable for all Assessments and other obligations imposed on Unit Owners by the Act or this Declaration.
- 20.6     Reliance. The Termination Trustee may rely upon the written instructions and information provided to it by the officers, directors and agents of the Association, and shall not be required to inquire beyond such information and instructions.
- 20.7     Partition; Sale. Following termination, the former Condominium Property and Association Property may be partitioned and sold upon the application of any Unit Owner. If following a termination, Unit Owners holding not less than seventy-five percent (75%) of the voting interests present in person or by proxy at a duly called meeting of the Association agree to accept an offer for the sale of the Condominium Property or Association Property or both, the Board of Directors shall notify the Termination Trustee, and the Termination Trustee shall complete the transaction. In such event, any action for partition of the Condominium or Association Property shall be held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto. If the Unit Owners have not authorized a sale of the former Condominium Property and Association Property within one (1) year after the recording of the Certificate of Termination, the Trustee may proceed to sell the Condominium Property or Association Property without agreement by the Association or the former Unit Owners. The net proceeds of the sale of any of the Condominium or Association Property or assets of the Condominium or the Association shall be distributed by the Termination Trustee to the beneficial owners thereof, as their interests shall appear, provided, however, that no payment shall be made to a former Unit Owner until there has first been paid off out of its share of such net proceeds all liens on its beneficial interest in the order of their priority.
- 20.8     New Condominium. The termination of the Condominium shall not bar creation of another Condominium including all or any portion of the Condominium Property or Association Property.
- 20.9     Provisions Survive Termination. The provisions of this Article 20 are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed. The Board of Directors shall continue to function in accordance with the By-Laws and Articles of Incorporation, and shall have the power to levy Assessments to pay the costs and expenses of the Termination Trustee and of maintaining the Condominium or Association Property until it is sold. The costs of termination, the fees and expenses of the Termination Trustee, as well as post-termination costs of maintaining the former Condominium Property, are Common Expenses, the payment of which shall be secured by a lien on the beneficial interest owned by each former Unit Owner, which to the maximum extent permitted by law, shall be superior to, and take priority over, all other liens.
- 20.10   Amendment to Article 20. This Article may not be amended without the consent of the Developer as long as it owns any Unit.

## **21.     ADDITIONAL RIGHTS OF MORTGAGEES AND OTHERS.**

- 21.1     Availability of Association Documents. The Association shall have current and updated copies of the following available for inspection by Institutional First Mortgagees during normal business hours or under

other reasonable circumstances as determined by the Board: (a) this Declaration; (b) the Articles; (c) the By-Laws; (d) the Rules and Regulations of the Association; and (e) the books, records and financial statements of the Association.

**21.2** Notices. Any mortgagee, insurer or guarantor of a mortgage on a Unit shall have, if first requested in writing, the right to timely written notice of:

- (a) any condemnation or casualty loss affecting a material portion of the Condominium and/or Association Property or the affected mortgaged Unit;
- (b) any delinquency in the payment of the Assessments on a mortgaged Unit in excess of sixty (60) days;
- (c) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) any proposed action which requires the consent of a specified number of mortgage holders.

**21.3** Additional Rights. Institutional First Mortgagees shall have the right, upon written request to the Association, to: (a) receive a copy of the annual financial statement of the Association for the immediately preceding fiscal year if such statements were prepared; and (b) receive notices of and attend Association meetings.

**22. COVENANT RUNNING WITH THE LAND.** All provisions of this Declaration, the Articles, By-Laws and applicable Rules and Regulations of the Association, shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the Developer and subsequent Owner(s) of the Land or any part thereof, or interest therein, and their respective heirs, personal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Unit Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration and such Articles, By-Laws and applicable Rules and Regulations, as they may be amended from time to time. The acceptance of a deed or conveyance, or the entering into occupancy of any Unit, shall constitute adoption and ratification of the provisions of this Declaration, and the Articles, By-Laws and applicable Rules and Regulations of the Association, as they may be amended from time to time, including, but not limited to, a ratification of any appointments of attorneys-in-fact contained herein.

**23. DISCLAIMER OF WARRANTIES.** Developer hereby disclaims any and all express or implied warranties as to design, construction, sound transmission, furnishing and equipping of the Condominium Property, except only those set forth in section 718.203 of the Act, to the extent applicable and to the extent that same have not expired by their terms. As to such warranties which cannot be disclaimed, and to other claims, if any, which can be made as to the aforesaid matters, all incidental and consequential damages arising therefrom are hereby disclaimed.

Without limiting the generality of the foregoing, Developer further disclaims any liability to comply with, or upgrade any improvements and/or the Condominium Property as a result of, any changes or modifications to, or adoption of further federal, state or municipal laws, codes, ordinances regulations or rules hereafter applicable to the Condominium Property.

All Unit Owners, by virtue of acceptance of title to their respective Units (whether from the Developer or another party), shall be deemed to have automatically waived all of the aforesaid disclaimed warranties and incidental and consequential damages.

**24. NO TIME-SHARE ESTATES.** The Developer will not create time-share estates with respect to the Units.

**25. CPI.** Whenever a specific dollar amount is recited in this Declaration (or in the Articles or By-Laws or Rules and Regulations), such amounts shall be increased from time to time by application of a nationally recognized consumer price index using the date of recordation of this Declaration as the base year (unless prohibited or limited by law or by the specific text hereof or unless held to be unconscionable). The index used shall be that published by the United States Department of Labor, Bureau of Labor Statistics, designated as "Consumer Price Index, all urban consumers, United States, 1982 84 = 100, all items". If the Bureau of Labor Statistics shall

change the method for determining the consumer price index or in the event the Bureau of Labor Statistics shall cease to publish said statistical information and it is not available from any other source, public or private, then the Association shall choose a reasonable alternative to compute such increases.

## **26. ADDITIONAL PROVISIONS.**

- 26.1     Notices. All notices to the Association required or desired hereunder or under the By-Laws of the Association shall be sent by certified mail (return receipt requested) or by a nationally recognized overnight delivery service (such as Federal Express or UPS) to the Association in care of its office at the Condominium, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the address of such Unit Owner at the Condominium, or such other address as may have been designated by the Unit Owner from time to time, in writing, to the Association. All notices to mortgagees of Units shall be sent by first class mail to their respective addresses, or such other address as may be designated by them from time to time, in writing to the Association. All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received, or five (5) business days after proper mailing, whichever shall first occur.
- 26.2     Interpretation. The Board of Directors of the Association shall be responsible for interpreting the provisions hereof and of any of the Exhibits attached hereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of legal counsel that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.
- 26.3     Interpretation. Anything herein to the contrary notwithstanding, the Association shall not be responsible to any mortgagee or lienor of any Unit hereunder, and may assume the Unit is free of any such mortgages or liens, unless written notice of the existence of such mortgage or lien is received by the Association.
- 26.4     Exhibits. There is hereby incorporated in this Declaration all materials contained in the Exhibits annexed hereto, except that as to such Exhibits, any conflicting provisions set forth therein as to their amendment, modification, enforcement and other matters shall control over those in this Declaration.
- 26.5     Signature of President and Secretary. Wherever the signature of the President of the Association is required hereunder, the signature of the vice-president may be substituted therefor, and wherever the signature of the Secretary of the Association is required hereunder, the signature of an assistant secretary may be substituted therefor, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities.
- 26.6     Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the Exhibits annexed hereto or applicable Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida.
- 26.7     Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, paragraph, clause, phrase or word, or other provision of this Declaration, the Exhibits annexed hereto, or applicable Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.
- 26.8     Waiver. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the Articles, By-Laws, or the Rules and Regulations adopted pursuant to said documents, as the same may be amended from time to time, shall not constitute a waiver of their right to do so thereafter.
- 26.9     Ratification. Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each occupant of a Unit, by reason of this occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of the Condominium Documents, are fair

and reasonable in all material respects.

- 26.10    Execution of Documents; Attorney-in-Fact. Without limiting the generality of other Sections of this Declaration and without such other Sections limiting the generality hereof, each Owner, by reason of the acceptance of a deed to such Owner's Unit, hereby agrees to execute, at the request of the Developer, all documents or consents which may be required by all governmental agencies to allow the Developer and its affiliates to complete the plan of development of the Condominium as such plan may be hereafter amended, and each such Owner further appoints hereby and thereby the Developer as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of such Owners, any and all of such documents or consents. This power of attorney is irrevocable and coupled with an interest. The provisions of this Section may not be amended without the consent of the Developer.
- 26.11    Gender; Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.
- 26.12    Captions. The captions herein and in the Exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.



IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed and its corporate seal to be here-  
unto affixed as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

Witnessed by:

**RPG Cabana Key LLC**, a Delaware limited liability company

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

STATE OF FLORIDA        )

) ss:

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_ by  
\_\_\_\_\_, as Manager of **RPG Cabana Key LLC**, a Delaware limited liability company, on behalf  
of the company. He/she is personally known to me or has produced  
\_\_\_\_\_ as identification.

Name: \_\_\_\_\_

Notary Public, State of Florida

My Commission Expires:

Commission No.: \_\_\_\_\_

## JOINDER

CABANA KEY CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, hereby agrees to accept all the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of this Declaration and Exhibits attached hereto.

IN WITNESS WHEREOF, CABANA KEY CONDOMINIUM ASSOCIATION, INC. has caused these presents to be signed by its proper officer and its corporate seal to be affixed this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

Witnessed by: CABANA KEY CONDOMINIUM ASSOCIATION, INC.,  
a Florida not for profit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Title: \_\_\_\_\_

(Corporate Seal)

Name: \_\_\_\_\_ Address: \_\_\_\_\_

STATE OF FLORIDA )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by \_\_\_\_\_, as President of CABANA KEY CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, on behalf of the corporation. He/she is personally known to me or has produced as identification.

Name: \_\_\_\_\_

Notary Public, State of Florida

Commission No.:

My Commission Expires:

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**SCHEDULE OF EXHIBITS TO  
DECLARATION OF CONDOMINIUM  
FOR CABANA KEY, A CONDOMINIUM**

Exhibit "A"	Legal Description of the Land
Exhibit "B"	Survey of the Land, a graphic description of the Improvements located thereon, including the Building in which the Units are located, and a plot plan thereof.
Exhibit "C"	Percentage Interest in the Common Elements and Common Surplus, and the Percentage Share of the Common Expenses for each Unit
Exhibit "D"	By-Laws for CABANA KEY Condominium Association, Inc., a Florida not for profit corporation
Exhibit "E"	Articles of Incorporation for CABANA KEY Condominium Association, Inc., a Florida not for profit corporation
Exhibit "F"	Rules and Regulations

**Exhibit "A"**

Legal Description of the Land

# **Exhibit "B"**

Survey of the Land, a graphic description of the Improvements located thereon, including the Building in which the Units are located, and a plot plan thereof.

### **EXHIBIT "C"**

Percentage Interest in Common Elements and Common Surplus and the Percentage Share of Common Expenses for each Unit.

The following formula shall be utilized to determine the percentage interest and share of common elements and expenses:

Unit Share =  $\frac{1 \text{ unit}}{160 \text{ number of units}}$

Each Unit will have a 1/160 share and percentage interest



**Exhibit “D”**

By-Laws for CABANA KEY Condominium Association, Inc.,

a Florida not for profit corporation

SEE EXHIBIT “4” TO THE PROSPECTUS

**Exhibit “E”**

Articles of Incorporation for CABANA KEY Condominium Association, Inc.,

a Florida not for profit corporation

SEE EXHIBIT “3” TO THE PROSPECTUS

**Exhibit “F”**

Rules and Regulations for CABANA KEY, a Condominium

SEE EXHIBIT “10” TO THE PROSPECTUS

PREPARED BY AND RETURN TO:

Brian M. Jones, Esq. • Shutts & Bowen LLP  
300 S. Orange Ave., Suite 1000 • Orlando, FL 32801-5403

**JOINDER OF MORTGAGEE**

THIS JOINDER AND CONSENT ("Consent"), is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by \_\_\_\_\_ (the "Mortgagee").

WHEREAS, Mortgagee is the owner and holder of that Mortgage and Security Agreement executed by CABANA KEY, LLC, a Florida limited liability company, ("Mortgagor"), to Mortgagee, dated \_\_\_\_\_ and filed \_\_\_\_\_, in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_, together with Assignment of Rents, Leases and Proceeds executed by Mortgagor to Mortgagee, filed \_\_\_\_\_, in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_, and UCC-1 Financing Statement executed by Mortgagor, as Debtor, to Mortgagee, as Secured Party, filed \_\_\_\_\_, in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_, all recorded in the Public Records of Miami-Dade County, Florida; and

WHEREAS, Mortgagor has executed that certain Declaration of Condominium for CABANA KEY, a Condominium ("Declaration of Condominium") relating to the real property described therein ("Property"); and

WHEREAS, the Mortgage encumbers the Property described in the foregoing Declaration of Condominium; and

WHEREAS, the Mortgagors have requested the Mortgagee to join in and consent to the Declaration of Condominium.

NOW, THEREFORE, the Mortgagee does hereby consent to and join in the Declaration of Condominium. The Declaration of Condominium shall survive any foreclosure of the Mortgage and shall be binding upon all persons, and their successors in title claiming all or any portion of the Property; provided, however, that at no time shall the foregoing Joinder: (i) before such foreclosure obligate the Mortgagee to perform the covenants contained in or make any payments required by the Declaration of Condominium; (ii) impose any liability on the Mortgagee for failure of any predecessor in interest to the Mortgagee to perform such covenants; or (iii) be deemed a limitation on the operation or effect of the Mortgage except as specifically set forth in this Joinder.

IN WITNESS WHEREOF, the Mortgagee has executed this instrument as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

Signed, Sealed and Delivered

in the presence of: \_\_\_\_\_ **BANK**

\_\_\_\_\_ By: \_\_\_\_\_

Witness

Print Name \_\_\_\_\_

\_\_\_\_\_ [SEAL]

Witness

Print Name \_\_\_\_\_

STATE OF FLORIDA       )  
  )  
COUNTY OF               )       ss:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_ **BANK**, a bank, who is personally known to me or has produced \_\_\_\_\_ as identification and who did ( not ) take an oath.

Notary Public, State of Florida

Name: \_\_\_\_\_ Certificate No.: \_\_\_\_\_

My commission expires: \_\_\_\_\_

